



Council Meeting Agenda

Tuesday 1 February 2022 at 6:00 pm
Council Chambers (and by video conferencing)
East Gippsland Shire Council Corporate Centre
273 Main Street, Bairnsdale 3875



Acknowledgement to country

East Gippsland Shire Council acknowledges the Gunaikurnai, Monero and the Bidjil people as the Traditional Custodians of this land that encompasses East Gippsland Shire, and their enduring relationship with country. The Traditional Custodians have cared and nurtured East Gippsland for tens of thousands of years.

Council value their living culture and practices and their right to self-determination. Council pays respect to all Aboriginal and Torres Strait Islander people living in East Gippsland, their Elders, past, present, and future.

Council information

East Gippsland Shire Council live streams, records and publishes its meetings via webcasting (youtube.com/c/EastGippsTV) to enhance the accessibility of its meetings to the broader East Gippsland community.

These recordings are also archived and available for viewing by the public or used for publicity or information purposes. At the appropriate times during the meeting, any members of the gallery who are addressing the council will have their image, comments or submissions recorded.

No other person has the right to record Council meetings unless approval has been granted by the Chair.

The Victorian Government has amended the *COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Act 2020* that enables Council meetings to be conducted by electronic means (videoconferencing) until 26 April 2022. The Minister for Local Government re-issued the Ministerial Good Practice Guideline for Virtual Meetings on 20 October 2020 outlining the provisions relating to the Local Government Act 2020 allow Councillors to attend Council meetings electronically, and the requirement where Council meetings are open to the public will be satisfied where the meeting is livestreamed. The amendments do not preclude Councillors from attending a meeting in person in the Council chambers.

Members of the public are invited to view the Council Meeting livestreamed by following the link on Council's website or Facebook page.

Photo supplied by Destination Gippsland

Councillors

Cr Mark Reeves (Mayor)
Cr Arthur Allen (Deputy Mayor)
Cr Sonia Buckley
Cr Tom Crook
Cr Jane Greacen OAM
Cr Trevor Stow
Cr Mendy Urie
Cr Kirsten Van Diggele
Cr John White

Executive Leadership Team

Anthony Basford Chief Executive Officer
Fiona Weigall General Manager Assets and Environment
Peter Cannizzaro General Manager Business Excellence
Stuart McConnell General Manager Place and Community

Purpose of Council meetings

- (1) Council holds scheduled meetings and, when required, unscheduled meetings to conduct the business of Council.
- (2) Council is committed to transparency in decision making and, in accordance with the *Local Government Act 2020*, Council and Delegated Committee meetings are open to the public and the community are able to attend.
- (3) Meetings will only be closed to members of the public, in accordance with section 66 of the Act, if:
 - (a) there are clear reasons for particular matters to remain confidential; or
 - (b) a meeting is required to be closed for security reasons; or
 - (c) it is necessary to enable the meeting to proceed in an ordinary manner.
- (4) A meeting closed to the public for the reasons outlined in sub-rule 3(b) or 3(c) will continue to be livestreamed. In the event a livestream is not available:
 - (a) the meeting may be adjourned; or
 - (b) a recording of the proceedings may be available on the Council website.

Governance Rules

A copy of East Gippsland Shire Council's governance rules can be found at
<https://www.eastgippsland.vic.gov.au/council/council-policies>

Councillors pledge

As Councillors of East Gippsland Shire Council, we solemnly and sincerely declare and affirm that we will consider each item on this agenda in the best interests of the whole municipal community.

Vision

East Gippsland is an inclusive and innovative community that values our natural environment, puts community at the centre of Council decision-making, and creates the conditions in which communities can thrive.

Our Strategic Objectives

1. An inclusive and caring community that respects and celebrates diversity
2. Planning and infrastructure that enriches the environment, lifestyle, and character of our communities.
3. A natural environment that is managed and enhanced.
4. A thriving and diverse economy that attracts investment and generates inclusive local employment.
5. A transparent organisation that listens and delivers effective, engaging and responsive services

Index

1 Procedural	7
1.1 Recognition of Traditional Custodians	7
1.2 Apologies	7
1.3 Declaration of Conflict of Interest	7
1.4 Confirmation of minutes	7
1.5 Next meeting	7
1.6 Requests for leave of absence	7
1.7 Open Forum	7
1.7.1 Petitions	7
1.7.2 Questions of Council	7
1.7.3 Public Submissions	7
2 Notices of Motion	7
3 Deferred Business	7
4 Councillor and Delegate Reports	7
5 Officer Reports	8
5.1 Assets and Environment	8
5.1.1 CON2022 1462 Bairnsdale Resource Recovery Centre Environmental Protection Authority Compliance Flare	8
5.1.2 Contract Extension - CON2019 1260 Supply and Delivery of Calibrated Chain for the Raymond Island Ferry	13
5.2 Business Excellence	17
5.2.1 Amendment Instrument of Sub-Delegation Council to members of Staff and Instruments of Appointment and Authorisation	17
5.2.2 21 Year Lease - Surf Life Saving Lakes Entrance	32
5.3 Place and Community	39
5.3.1 Proposal to End Agreement AG108268G - 236 Clifton West Road Wy Yung	39
5.3.2 Notice of Decision to Grant a Planning Permit 111/2020/P at 705 Metung Road, Metung	69

5.3.3 Planning Application 284/2019/P – For Refusal - Five lot subdivision, removal of native vegetation, and subdivision adjacent to a road in RDZ1 at 705 Bengworden and 80 Comleys Road Goon Nure.....	136
5.3.4 Request to end (in principal support) legal agreements 31 May Park Drive, Paynesville and 40 Koraleigh View, Nicholson	167
5.3.5 Planning Permit Application - 475/2020/P 30 Clifton West Road, Wy Yung - Multi-lot subdivision, roadworks and removal of vegetation.....	273
6 Urgent and Other Business	333
7 Confidential Business	333
7.1 Council Insurance 2022/23	333
8 Close of Meeting	333

1 Procedural

1.1 Recognition of Traditional Custodians

East Gippsland Shire Council acknowledges the Gunaikurnai, Monero and the Bidawal people as the Traditional Custodians of this land that encompasses East Gippsland Shire, and their enduring relationship with country. The Traditional Custodians have cared and nurtured East Gippsland for tens of thousands of years.

Council value their living culture and practices and their right to self-determination. Council pays respect to all Aboriginal and Torres Strait Islander people living in East Gippsland, their Elders, past, present, and future.

1.2 Apologies

1.3 Declaration of Conflict of Interest

1.4 Confirmation of minutes

That the minutes of the Council Meeting held Tuesday 7 December 2021 and the unscheduled Council Meeting held Tuesday 16 December 2021 be confirmed.

1.5 Next meeting

The next Council Meeting of Tuesday 22 February 2022 to be held at the Corporate Centre, 273 Main Street Bairnsdale commencing at 6.00 pm.

1.6 Requests for leave of absence

1.7 Open Forum

1.7.1 *Petitions*

1.7.2 *Questions of Council*

1.7.3 *Public Submissions*

2 Notices of Motion

3 Deferred Business

4 Councillor and Delegate Reports

5 Officer Reports

5.1 Assets and Environment

5.1.1 CON2022 1462 Bairnsdale Resource Recovery Centre Environmental Protection Authority Compliance Flare

Authorised by General Manager Assets and Environment

Conflict of Interest

No Officer who has provided advice in the preparation of this report has disclosed a conflict of interest.

Executive Summary

Pursuant to sections 3(1) and 66(5) of the *Local Government Act 2020*, the information contained in this report attachments is confidential because it contains private commercial information, which if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage.

Bairnsdale Regional Landfill (also known as a Resource Recovery Centre – RRC) is key to meeting the waste management needs of the East Gippsland community, providing a centralised and highly managed facility to cater for all waste generated across East Gippsland in a way that minimises impact on the environment.

Cells 1 & 2 at Bairnsdale Regional Landfill have been fully utilised and capped. These cells contain a gas collection system to prevent hazardous accumulation of gasses within the cell. This system presently vents gas to the atmosphere. The Environmental Protection Authority (EPA) establishes limits on the volume of gas that can be passively vented into the atmosphere. In continuing to meet EPA requirements, Council is required to install controls which will prevent the untreated gas from exceeding specified levels by 30 May 2022.

In response to this requirement, a specification has been developed for a gas flare to be installed at the Bairnsdale Regional Landfill to effectively manage gas emissions. The gas flare will be suitably sized to accommodate both current and future needs of the site.

The collection and release of landfill gases is needed to ensure safe operation of the site and burning of landfill gasses will greatly reduce the environmental impacts of gases that would have otherwise been vented to the atmosphere.

The project includes the detailed design, construction and installation of a suitable gas flare. As a result of the invitation to tender for these works and the subsequent tender evaluation provided as **Confidential Attachment 1**, Council is now able to consider the recommendation to award the contract.

Officer Recommendation

That Council:

- 1. receives and notes this report and all attachments pertaining to this report;**
- 2. accepts the tender submitted by _____ for CON2022 1462 Bairnsdale Resource Recovery Centre Environmental Protection Authority Compliance Flare for the amount of \$_____ (exc GST)**
- 3. authorises the signing and sealing of the contract in the form presented; and**
- 4. resolves that the attachments to this report, and all discussions in relation to the attachments remain confidential.**

Background

Bairnsdale Regional Landfill is key to meeting the waste management needs of the East Gippsland community. In accordance with Environmental Protection Authority (EPA) requirements, all smaller local landfills have been progressively closed and rehabilitated, or will be within the next 12 months. The Bairnsdale Regional Landfill will provide a centralised and highly managed facility to cater for all waste generated across East Gippsland, with landfill cells progressively constructed and capped in accordance with current best practice design and EPA requirements.

Cells 1 & 2 at Bairnsdale Regional Landfill have been fully utilised and capped. Cell 3A is awaiting capping and Cell 3B is currently in use, with Cell 4 currently under construction to provide for the regions waste needs over the next 3 years.

Gas monitoring of capped landfill cells is a routine management requirement and regular reporting is necessary as an EPA licence condition. Capped cells 1 & 2 contain a gas collection system to prevent hazardous accumulation of gasses within the cell, that presently vent gases to the atmosphere. The EPA establishes and conditions limits on the volume of gas that can be passively vented to the atmosphere. In continuing to meet these requirements, Council is now required by the EPA to install controls which will prevent the gas from exceeding specified levels by 30 May 2022.

In response to this requirement, a specification has been developed for a gas flare to be installed at the Bairnsdale Regional Landfill to effectively manage methane gas emissions. The gas flare will be suitably sized to accommodate the current methane gas produced by capped cells 1 & 2, while also providing future capacity for cell 3A, cell 3B, cell 4 (under construction) and cell 5 (future construction).

The collection and release of landfill gases is needed to ensure safe operation of the site and burning of landfill gasses will greatly reduce the environmental impacts of gases that would have otherwise been vented to the atmosphere. While current gas volumes are not considered sufficient for viable energy recovery, this may become viable at the Bairnsdale Regional Landfill into the future following the capping of further cells.

A tender has been advertised for the design, construction and installation of a suitable gas flare at the Bairnsdale Regional Landfill. As a result of the invitation to tender and the subsequent tender evaluation provided as **Confidential Attachment 1**, Council is now able to consider the recommendation to award the contract.

Legislation

On 24 March 2020 the Government passed the *Local Government Act 2020* (the new Act). As of 1 July 2021 all provisions from the new Act have commenced. Some provisions of the *Local Government Act 1989*, that have not been repealed, will remain applicable until such time as they are revoked.

This report has been prepared in accordance with *Local Government Act 2020*.

Pursuant to sections 3(1) and 66(5) of the *Local Government Act 2020*, the information contained in the attachment to this report is confidential because it contains private commercial information, which if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage.

The implications of this report have been assessed and are not considered likely to breach or infringe upon the human rights detailed in the Victorian Government's Charter of *Human Rights and Responsibilities Act 2006*.

Collaborative Procurement

Pursuant of section 109(2) of the *Local Government Act 2020* this procurement has not been undertaken in collaboration with other Councils as it relates to a specific EPA compliance matter relevant only to East Gippsland Shire Council.

Council Plan

This report has been prepared and aligned with the following strategic objectives set out in the Council Plan 2021-2025:

Strategic Objective 3: 3.1 Council works to reduce its own and the communities carbon emissions while supporting the community to mitigate the impact of a changing climate on the environment, safety, health and lifestyles.

Strategic Objective 3: 3.2 Sustainable land use practices are used to manage council land to protect biodiversity and to provide education and incentives to support the management of private land.

Strategic Objective 3: 3.3 Natural values on key Council managed land are managed and enhanced.

Council Policy

Procurement has been undertaken in accordance with the East Gippsland Shire Council Procurement Policy (2021).

Options

Confidential Attachment 1 considers a detailed assessment of tender options. Council is in a position to consider these options and the recommendation made by the Tender Evaluation Panel.

Resourcing

Financial

A detailed project financial assessment is provided within the Tender Evaluation Report provided as **Confidential Attachment 1**.

Plant and equipment

All plant and equipment requirements of the project will be provided in accordance with the proposed contract.

Human Resources

The contract will be managed by a Project Supervisor allocated from within Council's Assets and Projects Team.

Risk

The project and proposed contract respond to a mandatory requirement of Environmental Protection Agency Victoria to manage environmental risk. The recommendation made in this report adequately addresses these risks.

Economic

In accordance with Council's Procurement Policy (2021), the Tender Evaluation Report detailed in **Confidential Attachment 1** considers the extent of local contribution provided by each tender submission.

Social

The project will ensure the viable continuation of the East Gippsland communities regional waste management facility in accordance with EPA Victoria best practice guidelines.

Environmental

The collection and release of landfill gases is needed to ensure safe operation of the site and burning of landfill gasses will greatly reduce the environmental impacts of gases that would have otherwise been vented to the atmosphere.

Climate change

This report has been prepared and aligned with the following Climate Change function/category:

Asset Management: Climate change is considered in the design and maintenance of assets and includes responses to direct and indirect impacts.

Engagement

Not applicable.

Attachments

1. CONFIDENTIAL - CON 2022 1462 Bairnsdale RRC - Cell 1 & 2 EPA Compliance Flares - TEP Report [5.1.1.1 - 7 pages]

5.1.2 Contract Extension - CON2019 1260 Supply and Delivery of Calibrated Chain for the Raymond Island Ferry

Authorised by General Manager Assets and Environment

Conflict of Interest

Officers preparing this report have no conflict of interest to declare.

Executive Summary

The purpose of this report is to seek Council's approval to exercise its option within CON2019 1260, to extend the existing contract Supply and Delivery of Calibrated Chain for the Raymond Island Ferry to Pewag Australia Pty Ltd (Pewag), for the final term period of twelve (12) months, to 5 March 2023.

East Gippsland Shire Council owns and operates the Raymond Island Ferry which provides the only public access to Raymond Island. The ferry is constructed of steel and operates between Paynesville and Raymond Island across McMillan Strait, a narrow stretch of water of approximately 160 metres wide, via a dual chain hydraulic drive.

The existing chains used to manoeuvre the ferry across the strait have been replaced throughout the initial contract term and under the terms of the contract Pewag has ensured a matching backup chain is available at short notice.

The contract commenced on 6 March 2019 with the initial three (3) year term scheduled to end on 5 March 2022. Under the agreement, Council has the option to extend the contract for a further twelve (12 months) solely exercisable by Council. The intention is to extend the contract for the full final contract extension term with the completion date being 5 March 2023.

Officer Recommendation

That Council:

- 1. receives and notes this report,***
- 2. approves the contract extension to CON2019 1260 to the existing contract Supply and Delivery of Calibrated Chain for the Raymond Island Ferry for a period of twelve (12) months to 5 March 2023, to the tendered schedule of rates to Pewag Australia Pty Ltd; and***
- 3. authorises the Chief Executive Officer to finalise the terms, signing and sealing of the contract extension in the form proposed.***

Background

CON2019 1260 is a lump sum contract for an appropriate contractor to supply and deliver the calibrated chain for the Raymond Island Ferry. This contract is not subject to adjustment for rise and fall in costs.

On 5 February 2019 CON2019 1260 Supply and Delivery of Calibrated Chain was awarded by Council for the initial term commencing 6 March 2019 and expiring on 5 March 2022.

As a result of the request for tender process, a contract was formed with Pewag Australia Pty Ltd. Pewag has agreed to the contract extension, subject to Council approval.

The supply of the calibrated chain and works completed to date as part of the contract has been satisfactory. Based on performance and reliability, this report recommends Pewag be offered the extension option, subject to Council approval.

Legislation

On 24 March 2020 the Government passed the *Local Government Act 2020* (the new Act). As of 1 July 2021, all provisions from the new Act have commenced. Some provisions of the *Local Government Act 1989*, that have not been repealed, will remain applicable until such time as they are revoked.

This report has been prepared in accordance with *Local Government Act 2020*.

The implications of this report have been assessed and are not considered likely to breach or infringe upon the human rights detailed in the Victorian Government's Charter of Human Rights and Responsibilities Act 2006.

Collaborative procurement

Not applicable

Council Plan

This report has been prepared and aligned with the following strategic objectives set out in the Council Plan 2021-2025:

Strategic Objective 2: 2.2 Infrastructure provision and maintenance supports a diverse range of current and future user needs and activities and is both environmentally and financially sustainable.

Council Policy

This report and its recommendations are in accordance with the East Gippsland Shire Council Procurement Policy (2021).

Options

There are two options available to Council with respect to this report.

1. Exercise the twelve (12) month extension option with Pewag Australia Pty Ltd with the contract completion date being 5 March 2023.
2. Re-tender for the services provided by Contract CON2019 1260 Supply and Delivery of Calibrated Chain

Option 1 is recommended for the reasons outlined earlier in this report, as it provides Council with the soundest contractor reliability choice.

Resourcing

Financial

The spend to date on the elements covered under this contract are as follows:

28/05/2019	\$117,571.50 gst excl.	Part payment for calibrated chain
30/06/2019	\$117,571.50 gst excl.	180m length HERO-V & drive wheels
09/12/2019	\$5,720.00 gst excl.	Locking Parts – spare parts for K-Hero 26x100
27/07/2020	\$17,932.00 gst excl.	Plain tail wheel
Total	\$258,795.00 gst excl.	

A second set of chains and pocket wheels has been ordered with an anticipated delivery date being March 2022 valued at \$167,786.14 gst excl.

It is anticipated the spend for the extension term will not exceed \$20,000.00 gst excl. as Pewag Australia Pty Ltd will only be required to undertake chain measurements and inspections.

Plant and equipment

Not applicable

Human Resources

This contract is managed internally by existing staff within the Assets and Environment Directorate. Exercising the contract extension has no impact on existing staff capacity.

Risk

The risks of this proposal have been considered and the Contractor is required to carry out all activities as specified in the specifications and following the Occupational Health and Safety Regulations.

Economic

Offering the contract extension to the current contractor ensures continual operation of the Raymond Island ferry supporting local business and residents with transportation to and from Raymond Island.

Social

Raymond Island Ferry is a critical piece of Public Transport and the only form of Public Transport which links Raymond Island to the mainland of Paynesville. The Ferry averages more than 43,000 trips annually accommodating more than 640,000 passengers which consist of tourists, emergency services and residents of Raymond Island commuting.

The Ferry is unique and is the only type in this country which is chain driven. The Ferry consists of two 180m length calibrated chains which is integral to the Ferry being driven between the MacMillan Strait in a straight line against varying currents and tidal systems. To ensure the Ferry can continue to operate its demanding schedule, integrity chain testing is completed annually by the Chain manufacturer, testing the chain for wear which includes the chain pocket wheels which eventually wear over time.

Environmental

There are no identified environmental impacts in relation to this report.

Climate change

This report has been prepared and aligned with the following Climate Change function/category:

Asset Management: Climate change is considered in the design and maintenance of assets and includes responses to direct and indirect impacts.

Engagement

Not applicable.

Attachments

Nil

5.2 Business Excellence

5.2.1 Amendment Instrument of Sub-Delegation Council to members of Staff and Instruments of Appointment and Authorisation

Authorised by General Manager Business Excellence

Conflict of Interest

Officers preparing this report have no conflict of interest to declare.

Executive Summary

This report is seeking Council's approval for the amendments of the Instrument of Sub-Delegation under the *Environment Protection Act 2017*, at **Attachment 1**, to enable officers to enforce the provisions that have come into force on 1 July 2021. The provisions in the *Environment Protection Act 1970* have been repealed and replaced with the new provisions in the *Environment Protection Act 2017*.

Secondly, this report seeks Council's approval of the Instrument of Appointment and Authorisation under the *Environment Protection Act 2017* for the Domestic Waste Water Technical Officer in the Environmental Health Team, refer **Attachment 2**.

Inclusion of this Council role, Domestic Waste Water Technical Officer, to the Instrument of Sub-Delegation, and the creation of the new Instrument of Appointment, will enable Council staff to enforce the *Environment Protection Act 2017* and Council obligations.

Finally, this report seeks approval for the Instrument of Appointment and Authorisation under the *Planning and Environment Act 1987* for the Statutory Land Use Planning Officer – Bushfire Rebuild at **Attachment 3**.

An Instrument of Appointment and Authorisation enables authorised officers to act on behalf of Council in certain circumstances. Council staff are authorised under the *Environment Protection Act 2017* and *Planning and Environment Act 1987* to represent the Council in enforcing the provisions of the Acts.

Officer Recommendation

That Council:

1. *receives and notes this report and all attachments pertaining to this report;*
2. *in the exercise of the powers conferred by s 437(2) of the Environment Protection Act 2017 resolves that:*
 - a. *the Instrument of Sub-Delegation (S18) under the Environment Protection Act 2017 provided at Attachment 1 is amended and approved;*
 - b. *the Council Officer named in the Instrument of Appointment and Authorisation provided at Attachment 2 be appointed and authorised;*
 - c. *the Instrument of Sub-Delegation (S18) and the Instrument of Appointment and Authorisation come into force once the common seal is affixed and remain in force until Council determines to vary or revoke these; and*
 - d. *the Instrument of Sub-Delegation at Attachment 1 and Instrument of Appointment and Authorisation at Attachment 2 be signed and sealed;*
3. *in the exercise of the powers conferred by section 224 of the Local Government Act 1989 and section 147 (4) of the Planning and Environment Act 1987 resolves that:*
 - a. *the Council Officer named in the Instrument of Appointment and Authorisation provided at Attachment 3 be appointed and authorised;*
 - b. *the Instrument of Appointment and Authorisation come into force once the common seal is affixed and remain in force until Council determines to vary or revoke these; and*
 - c. *the Instrument of Appointment and Authorisation at Attachment 3 be signed and sealed.*

Background

The appointment of Authorised Officers allows certain Council staff to act on behalf of the Council in the administration and enforcement of various Acts, regulations or local laws in accordance with the powers granted to them.

Under the *Environment Protection Act 2017* Council staff act on behalf of Council in enforcing the provisions of the Act. The Instrument of Delegation of the Environment Protection Authority issued on 4 June 2021 gave Councils the power to exercise the Environment Protection Authority's powers and functions under the *Environment Protection Act 2017* for the purpose of regulating:

- onsite wastewater management systems with a design or actual flow rate of sewage not exceeding 5,000 litres on any day; and
- noise from construction, demolition and removal residential premises.

The Instrument of Sub-Delegation under the *Environment Protection Act 2017* at **Attachment 1** allows Council to delegate these powers to Council staff in the nominated positions.

This Instrument of Sub-Delegation requires that the Council staff members, in the position title 'Domestic Waste Water Technical Officer', is added to the nominated positions as an authorised officer under the *Environment Protection Act 2017*. Therefore, the following officer is required to be an authorised officer under the *Environment Protection Act 2017* as per **Attachment 2**:

Aaron Manuell - Domestic Waste Water Technical Officer

The Domestic Waste Water Technical Officer will be acting under s 358, s 359(1b) and 359(2) of the *Environment Protection Act 2017* only.

Under the *Planning and Environment Act 1987*, Council can appoint authorised officers to act on behalf of Council in certain circumstances and represent Council in enforcing provisions of the Act. Therefore, the following officer is required to be to be an authorised officer under the *Planning and Environment Act 1987* as per **Attachment 3**:

Michelle Dixon, Statutory Land Use Planning Officer – Bushfire Rebuild

The appointment of Authorised Officers allows certain Council staff to act on behalf of the Council in the administration and enforcement of various Acts, regulations or local laws in accordance with the powers granted to them.

Legislation

On 24 March 2020 the Government passed the *Local Government Act 2020* (the new Act). As of 1 July 2021 all provisions from the new Act have commenced. Some provisions of the *Local Government Act 1989*, that have not been repealed, will remain applicable until such time as they are revoked.

This report has been prepared in accordance with *Local Government Acts 1989* and 2020, the *Planning and Environment Act 1987* and *Environment Protection Act 2017*.

The implications of this report have been assessed and are not considered likely to breach or infringe upon the human rights detailed in the Victorian Government's Charter of *Human Rights and Responsibilities Act 2006*.

Collaborative Procurement

As this report does not detail procurement arrangements there is no collaboration required.

Council Plan

This report has been prepared and aligned with the following strategic objectives set out in the Council Plan 2021-2025:

Strategic Objective 5: 5.2 Strong relationships with government, partners and stakeholders are maintained and strengthened to advocate for the community.

Strategic Objective 5: 5.4 Continuous improvement systems are strengthened, and organisational efficiency enhanced.

Strategic Objective 5: 5.6 Council attracts, develops, and retains an inclusive workforce to deliver services and priorities.

Council Policy

There is no applicable Council Policy for this report.

Options

There are no alternative options for Council to consider in relation to Instruments of Appointment and Authorisation and Instrument of Sub-Delegation.

Resourcing

Financial

There are no financial implications from this report.

Plant and equipment

There are no plant and equipment implications from this report.

Human Resources

There are not implications for human resources. Existing resources will enforce the provisions of the *Environment Protection Act 2017* and the *Planning and Environment Act 1987*.

Risk

The risks of this proposal have been considered and by implementing the Instrument of Sub-Delegation and appointing authorised officers, minimises the risks of failing to comply with the *Environment Protection Act 2017* and *Planning and Environment Act 1987*, when officers are acting on behalf of Council under this Act.

Economic

The application of the powers, functions and duties under the *Environment Protection Act 2017* and *Planning and Environment Act 1987* will ensure businesses are operating within the legislative requirements and can effectively contribute to the Shire's economy.

Social

The East Gippsland Shire will have confidence that Council is applying the powers, duties and functions of the *Environment Protection Act 2017* and the *Planning and Environment Act 1987* for the well-being and benefit of the municipal community.

Environmental

The East Gippsland Shire will have confidence that Council is applying the powers, duties and functions of the *Environment Protection Act 2017* and the *Planning and Environment Act 1987* for the environmental sustainability of the Shire.

Climate change

This report has been prepared and aligned with the following Climate Change function/category:

This report is assessed as having no direct impact on climate change.

Engagement

The Instruments in the report have been prepared in consultation with appropriate personal across the Council.

Attachments

1. S 18 Instrument of Sub- Delegation Environment Protection Act 2017 [**5.2.1.1** - 8 pages]
2. Instrument of Appointment and Authorisation - A.Manuell [**5.2.1.2** - 1 page]
3. Instrument of Appointment and Authorisation - M.Dixon [**5.2.1.3** - 1 page]



East Gippsland Shire Council
Instrument of Sub-Delegation
Council
to
Members of Council staff

Approved by Council on [date] [month] 2022

Instrument of Sub-Delegation

By this Instrument of Sub-Delegation, in exercise of the power conferred by s 437(2) of the *Environment Protection Act 2017* ('**Act**') and the Instrument of Delegation of the Environment Protection Authority under the Act dated 4 June 2021, the Council:

1. delegates each duty and/or function and/or power described in column 1 of the Schedule (and summarised in column 2 of the Schedule) to the member of Council staff holding, acting in or performing the duties of the office or position described in column 3 of the Schedule;
2. this Instrument of Sub-Delegation is authorised by a resolution of Council passed on 14 September 2021 pursuant to a power of sub-delegation conferred by the Instrument of Delegation of the Environment Protection Authority under the Act dated 4 June 2021;
3. the delegation:
 - 3.1 comes into force immediately the common seal of Council is affixed to this Instrument of Sub-Delegation;
 - 3.2 remains in force until varied or revoked;
 - 3.3 is subject to any conditions and limitations set out in sub-paragraph 5, and the Schedule; and
 - 3.4 must be exercised in accordance with any guidelines or policies which Council from time to time adopts; and
4. this Instrument of Sub-Delegation is subject to the following limitations:
 - 4.1 the powers, duties and functions described in column and summarised in column 2 of the Schedule are only delegated for the purpose of regulating:
 - 4.1.1 onsite wastewater management systems with a design or actual flow rate of sewage not exceeding 5000 litres on any day; and
 - 4.1.2 noise from the construction, demolition or removal of residential premises;
5. the delegate must not determine the issue, take the action or do the act or thing:
 - 5.1 if the issue, action, act or thing is an issue, action or thing which Council has previously designated as an issue, action, act or thing which must be the subject of a Resolution of Council;
 - 5.2 if the determining of the issue, taking of the action or doing of the act or thing would or would be likely to involve a decision which is inconsistent with a
 - (a) policy; or
 - (b) strategy
 adopted by Council;

- 5.3 if the determining of the issue, the taking of the action or the doing of the act or thing cannot be the subject of a lawful delegation; or
- 5.4 the determining of the issue, the taking of the action or the doing of the act or thing is already the subject of an exclusive delegation to another member of Council staff.

THE COMMON SEAL of EAST GIPPSLAND SHIRE COUNCIL was hereunto affixed on the

..... day of _____ 2022 in the presence of:

..... Councillor

..... Chief Executive Officer



SCHEDULE

ENVIRONMENT PROTECTION ACT 2017			
Column 1	Column 2	Column 3	Column 4
PROVISION	THING DELEGATED	DELEGATE	CONDITIONS & LIMITATIONS
s 271	Power to issue improvement notice	Chief Executive Officer General Manager Assets and Environment General Manager Place and Community Manager Regulatory and Compliance Services Manager Sustainability and Waste Minimisation Coordinator Waste Operations Waste Planner Coordinator Environmental Health Coordinator Senior Community Laws Officer Environmental Health Officer Community Laws Coordinator Community Laws Officer	
s 272	Power to issue prohibition notice	Chief Executive Officer General Manager Assets and Environment General Manager Place and Community Manager Regulatory and Compliance Services Manager Sustainability and Waste Minimisation Coordinator Waste Operations	

ENVIRONMENT PROTECTION ACT 2017			
Column 1	Column 2	Column 3	Column 4
PROVISION	THING DELEGATED	DELEGATE	CONDITIONS & LIMITATIONS
		Waste Planner Coordinator Environmental Health Coordinator Senior Community Laws Officer Environmental Health Officer Community Laws Coordinator Community Laws Officer	
s 279	Power to amend a notice	Chief Executive Officer General Manager Assets and Environment General Manager Place and Community Manager Regulatory and Compliance Services Manager Sustainability and Waste Minimisation Coordinator Waste Operations Waste Planner Coordinator Environmental Health Coordinator Senior Community Laws Officer Environmental Health Officer Community Laws Coordinator Community Laws Officer	
s 358	Functions of the Environment Protection Authority	Chief Executive Officer General Manager Assets and Environment	

ENVIRONMENT PROTECTION ACT 2017			
Column 1	Column 2	Column 3	Column 4
PROVISION	THING DELEGATED	DELEGATE	CONDITIONS & LIMITATIONS
		General Manager Place and Community Manager Regulatory and Compliance Services Manager Sustainability and Waste Minimisation Coordinator Waste Operations Waste Planner Coordinator Environmental Health Coordinator Senior Community Laws Officer Environmental Health Officer Community Laws Coordinator Community Laws Officer Domestic Waste Water Technical Officer	
s 359(1)(b)	Power to do all things that are necessary or convenient to be done for or in connection with the performance of the Environment Protection Authority's functions and duties and to enable the Authority to achieve its objective.	Chief Executive Officer General Manager Assets and Environment General Manager Place and Community Manager Regulatory and Compliance Services Manager Sustainability and Waste Minimisation Coordinator Waste Operations Waste Planner Coordinator Environmental Health Coordinator	

ENVIRONMENT PROTECTION ACT 2017			
Column 1	Column 2	Column 3	Column 4
PROVISION	THING DELEGATED	DELEGATE	CONDITIONS & LIMITATIONS
		Senior Community Laws Officer Environmental Health Officer Community Laws Coordinator Community Laws Officer Domestic Waste Water Technical Officer	
s 359(2)	Power to give advice to persons with duties or obligations	Chief Executive Officer General Manager Assets and Environment General Manager Place and Community Manager Regulatory and Compliance Services Manager Sustainability and Waste Minimisation Coordinator Waste Operations Waste Planner Coordinator Environmental Health Coordinator Senior Community Laws Officer Environmental Health Officer Community Laws Coordinator Community Laws Officer Domestic Waste Water Technical Officer	

East Gippsland Shire Council

Instrument of Appointment and Authorisation (*Environment Protection Act 2017*)

In this instrument "officer" means -

Aaron Manuell, Domestic Waste Water Technical Officer

By this instrument of appointment and authorisation East Gippsland Shire Council -

under s 242(2) of the *Environment Protection Act 2017* ('Act') and the Instrument of Delegation of the Environment Protection Authority under the Act dated 4 June 2021 - appoints this officer to be an authorised officer for the purposes of exercising the powers and functions set out in the Instrument of Direction of the Environment Protection Authority under the Act dated 4 June 2021.

It is declared that this instrument -

- (a) comes into force immediately upon its execution;
- (b) remains in force until varied or revoked.

This instrument is authorised by a resolution of the East Gippsland Shire Council made on 1 February 2022.

THE COMMON SEAL of EAST GIPPSLAND SHIRE COUNCIL was hereunto affixed on the

..... day of 2022 in the presence of:

..... Councillor

..... Chief Executive Officer

EGSC common
seal to be
placed here.



July 2021

East Gippsland Shire Council

Instrument of Appointment and Authorisation

(*Planning and Environment Act 1987*)

In this instrument "officer" means -

Michelle Dixon, Statutory Land Use Planning Officer - Bushfire Rebuild

By this instrument of appointment and authorisation East Gippsland Shire Council -

1. under section 147(4) of the *Planning and Environment Act 1987*, appoints this officer to be an authorised officer for the purposes of the *Planning and Environment Act 1987* and the regulations made under that Act; and
2. under section 313 of the *Local Government Act 2020*, authorises this officer either generally or in a particular case to institute proceedings for offences against the Acts and regulations described in this instrument.

It is declared that this instrument -

- (a) comes into force immediately upon its execution;
- (b) remains in force until varied or revoked.

This instrument is authorised by a resolution of the East Gippsland Shire Council made on 1 February 2022.

THE COMMON SEAL of EAST GIPPSLAND SHIRE COUNCIL was hereunto affixed on the

..... day of 2022 in the presence of:

..... Councillor

..... Chief Executive Officer



July 2021

5.2.2 21 Year Lease - Surf Life Saving Lakes Entrance

Authorised by General Manager Business Excellence

Conflict of Interest

Officers preparing this report have no conflict of interest to declare.

Executive Summary

This report is to seek Council's agreement to grant a 21-year lease to the Surf Life Saving Lakes Entrance Incorporated (SLSLE) for the ongoing use and maintenance of the SLSLE club house and lifeguard tower at 426B Main Beach Walk Lakes Entrance for life saving purposes and associated activities.

SLSLE had an existing 21-year lease agreement that commenced 10 January 2001 and expired on 31 December 2021 with an annual rental of \$104.00 exclusive of GST per annum. An interim six-month agreement is in place to allow continued operation of the SLSLE over the summer period.

SLSLE provides important beach and aquatic safety services for the community of Lakes Entrance. These services include beach patrol activities, undertaken primarily by volunteers trained by the club and delivering training and education to help maintain a safe beach environment. The SLSLE is an important community service hub and meets a recognized need to provide a community service in line with the objectives of the lifesaving movement.

The area at Lakes Entrance that is occupied by SLSLE for a clubhouse is approximately 1733 square metres with an additional area of approximately 121 square meters for the lifeguard tower, with a total area of approximately 1854 square metres. A locality plan is provided at **Attachment 1**. The proposed lease agreement will be for a term of 21 years.

Under section 115 of the *Local Government Act 2020* (the Act), Council has the power to lease land, however if the lease is to be for ten years or more, Council must include any proposal to lease land in a financial year budget. If Council has not included a proposal to lease land in a financial year budget, Council must undertake a community engagement process in accordance with the Community Engagement Policy in respect of the proposal before entering into the lease.

The proposed lease to SLSLE will not be included in the 2022/2023 financial year budget as the budget for 2022/2023 will not be adopted by Council prior to the required timeframe for the completion of the lease agreement. The lease will need to be completed prior to the adoption of the 2022/2023 financial year budget process. A community engagement process will be undertaken in accordance with the Community Engagement Policy and provide the community with an opportunity to provide feedback on the proposed 21-year term for the lease.

Officer Recommendation

That Council:

- 1. receives and notes this report and all attachments pertaining to this report;***
- 2. endorses a 21-year term for the lease for the Surf Life Saving Lakes Entrance Incorporated club house and lifeguard tower at 426B Main Beach Walk Lakes Entrance for life saving purposes and associated activities; and***
- 3. notes that a community engagement process will be undertaken in respect of the 21-year term of the lease for Surf Life Saving Lakes Entrance Incorporated club house and lifeguard tower at 426B Main Beach Walk Lakes Entrance for life saving purposes and associated activities.***

Background

SLSLE has been in occupation of the club house and lifeguard tower at 426B Main Beach Walk Lakes Entrance (Property) under a 21-year lease agreement with an annual rental of \$104.00 exclusive of GST per annum, as the occupation is classified as community use due to the facility being specifically utilised to provide life-saving activities to the community of Lakes Entrance.

SLSLE has advised Council that they wish to remain on site at the Property for a further term of 21 years. A long-term lease allows SLSLE to continue to provide lifesaving purposes and associated activities during the summer period to the community of Lakes Entrance and provides for a certainty of tenure for development of the club within the community.

SLSLE also provides a surf education program (Nippers) under the auspice of Life Saving Victoria which includes competition, training, surf awareness and first aid in a safe and friendly environment which encourages children to have a go at all activities. SLSLE also runs the Surf Bronze Camp which provides an excellent opportunity to learn new skills in an activity that offers personal and physical development but also an invaluable community service while having fun at the beach. Over the summer period the SLSLE provides a lifesaving patrol to ensure effective beach management, and rescue capabilities, first aid and emergency care and educating the public about the dangers of the surf.

The area that is occupied by SLSLE for the clubhouse and lifeguard tower is approximately 1854 square metres in total, comprising of approximately 1733 square metres for the club house and approximately 121 square metres for the life guard tower, refer **Attachment 1**.

It is proposed that a lease agreement be entered into with SLSLE under section 17D of the *Crown Land (Reserves) Act 1978* (CLRA) to formalize its occupation of the Property for a maximum term of 21 years. SLSLE provide a vital service to the community during the summer season, in particular during the summer holiday period when there are many visitors to the beach, providing the iconic 'red and yellow' patrolled areas. The SLSLE provides support to the local Lakes Entrance community to ensure the safety of swimmers at the beach.

Legislation

On 24 March 2020 the Government passed the *Local Government Act 2020* (the new Act). As of 1 July 2021 all provisions from the new Act have commenced. Some provisions of the *Local Government Act 1989*, that have not been repealed, will remain applicable until such time as they are revoked.

This report has been prepared in accordance with section 115 of the new Act. If determined by Council that a 21-year lease agreement can be granted to SLSLE for use of the Property, community consultation will be undertaken in accordance with section 115(4) of the new Act.

As the Property is Crown land managed by Council as committee of management, the lease agreement will be issued under section 17D of the *Crown Land (Reserves) Act 1978* (CLRA).

The implications of this report have been assessed and are not considered likely to breach or infringe upon the human rights detailed in the Victorian Government's Charter of *Human Rights and Responsibilities Act 2006*.

Collaborative Procurement

There are no aspects of this report that require entering into a procurement agreement and therefore external collaboration is not appropriate.

Council Plan

This report has been prepared and aligned with the following strategic objectives set out in the Council Plan 2021-2025:

Strategic Objective 1: 1.3 Community groups and volunteers are acknowledged, promoted and supported.

Council Policy

The proposed lease is consistent with rental provisions of Council's *Leasing and Licensing Policy for Council-owned Land and Council-managed Land* (Leasing Policy).

The Leasing Policy provides a framework for leasing and licensing of Council-owned and Council managed land and one of the principles of the Leasing Policy is that the purpose of the lease is to provide demonstrated community and/or economic benefit. The granting of a 21-year lease agreement to SLSLE for use of the Property provides a public safety benefit to the community of Lakes Entrance by using trained volunteers to provide lifesaving activities during the summer period and keeping the beach safe.

Options

As the existing lease is 21 years, was purpose built by SLSLE and the requirement that the location of SLSLE must be close to the water to provide lifesaving activities to the community of Lakes Entrance, they are not able to operate from any other location within Lakes Entrance, no other lease options have been considered.

It is a requirement of section 115 of the new Act that the community engagement process must be followed in respect of a lease for 10 years or more.

Resourcing

Financial

There would be no financial implications for Council in securing the lease of the SLSLE club rooms and life guard tower for a further term of 21 years, the 21-year term will enable SLSLE to have a security of tenure to continue operating their life saving activities from the Property.

Plant and equipment

There are no plant and equipment requirements associated with this report.

Human Resources

The granting of a 21-year lease agreement to SLSLE to use the Property for life saving activities does not require any additional resources.

Risk

The granting of a 21-year lease agreement to SLSLE to use the Property for life saving activities, when the community engagement is undertaken, may receive submissions that oppose the granting of a 21-year lease. At which time Council will consider any written public submissions received in accordance with the Community Engagement Policy and evaluate on a case by case basis, taking into consideration each submissions merits and associated risks.

Economic

Securing a 21-year tenant for the Property will provide economic support to the community as the SLSLE holds state carnivals that attract families and other persons interested in surf lifesaving activities to the community of Lakes Entrance. The SLSLE also holds the annual Gippsland Lakes Paddle challenge where competitors experience and paddle the open water conditions on the Gippsland Lakes which attracts entrants from all over Australia.

Social

The SLSLE is part of our nation's cultural landscape. The SLSLE brings people together and help instil the value of selfless service in emerging leaders. This is demonstrated by the SLSLE providing beach patrols during the summer months, running the nippers program and the Surf Bronze Camp.

The SLSLE has played an important role in the Lakes Entrance community and is more than just a rescue organisation. The SLSLE has grown over the years to provide strong social and economic value to the East Gippsland community, which includes improved mental health, providing positive pathways for young people as well as water safety for children.

Gender Impact Statement

The 21-year lease for SLSLE has considered the *Gender Equality Act 2020* in its preparation but is not relevant to its content. The 21-year lease for SLSLE has been assessed as not requiring a Gender Impact Assessment (GIA).

Environmental

There are no environmental implications for the granting of a further lease term.

Climate change

This report has been prepared and aligned with the following Climate Change function/category:

This report is assessed as having no direct impact on climate change.

Engagement

Confirmation has been received from SLSLE that they wish to continue operating a surf lifesaving club from the Property and would like to enter into a lease agreement for a term of 21-years for the ongoing use of the club rooms and life guard tower for life saving activities. A 21-year lease gives SLSLE the opportunity to continue to provide lifesaving activities for the East Gippsland community from an appropriately located site.

Members of the public will be entitled to make a submission in response to the community engagement process in accordance with section 115 of the *Local Government Act 2020*.

Attachments

1. Attachment 1 Plan 426B Main Beach Walk Lakes Entrance [5.2.2.1 - 2 pages]

Site Plan



5.3 Place and Community

5.3.1 Proposal to End Agreement AG108268G - 236 Clifton West Road Wy Yung

Authorised by General Manager Place and Community

Conflict of Interest

Officers preparing this report have no conflict of interest to declare.

Executive Summary

The purpose of this report is to seek Council's decision to end the Section 173 Agreement AG108268G ('the Agreement') in relation to 236 Clifton West Road, Wy Yung.

The catalyst to end the Agreement AG108268G as it relates to 236 Clifton West Road is an application for planning permit for a two-lot subdivision. Ending the Agreement has previously been contemplated for another affected lot but was not completed. The Agreement prevents the proposed subdivision of the land. A request to end the Agreement and the relevant title documents, including the Agreement, can be found at **Attachment 1**.

Council provided in-principle support to end the Agreement at the 26 October 2021 Meeting (Item 5.4.3). Consultation has now been carried out. Notices were sent directly to the affected landowners with a note that Council would not determine the matter prior to 8 December 2021. Two objections were received and are provided at **Attachment 2**.

Ending the agreement as it relates to 236 Clifton West Road, Wy Yung is a reasonable request and will enable the land to be developed in accordance the applicable zone and overlays set out in the East Gippsland Planning Scheme. The concerns of the objectors can be mitigated via civil proceedings and should not prejudice a reasonable request to end the Agreement. The subdivision is subject to a separate determination to be made under delegation and is pending Council's resolution in relation to the Agreement so that the matters can be progressed concurrently.

Officer Recommendation

That Council:

- 1. receives and notes this report and all attachments pertaining to this report;***
- 2. agrees to the ending of Section 173 Agreement AG108268G wholly as it relates to Lot A on plan of subdivision 748423B at 236 Clifton West Road, Wy Yung in accordance with Section 178A of the Planning and Environment Act 1987 and resolves to issue a Notice of Decision to End an Agreement in accordance with S178E(3) of the Planning and Environment Act 1987; and***
- 3. resolves that all costs of ending the legal agreement are to be borne by the landowner.***

Background

Council has received a request to end Agreement AG108268G (**Attachment 1**) wholly as it relates to lot A on plan of subdivision 748423B at 236 Clifton West Road, Wy Yung. Planning permit application 323/2021/P for a two-lot subdivision and creation of a carriageway easement is currently under consideration. Two objections have been received, which raise concerns about the proposed ending of the Agreement, alongside concerns related to the intensification of the development, such as management of the carriageway, dust, and general amenity.

The Agreement was entered into in accordance with conditions of Planning Permit 150/2008/P, for a two-lot subdivision. The purpose of the Agreement was to ensure any buildings erected on the subject land were constructed within the building envelope as shown on the plan endorsed as part of Permit (**Figure 1**).

Section 173 Agreement AG108268G states:

SPECIFIC OBLIGATIONS OF THE OWNER

The Owner covenants and agrees that the Owner will not build, construct or erect or cause or permit to be built, constructed or erected any Building on the Subject Land or any part of the Subject Land outside a Building Envelope without the prior written consent of Council.

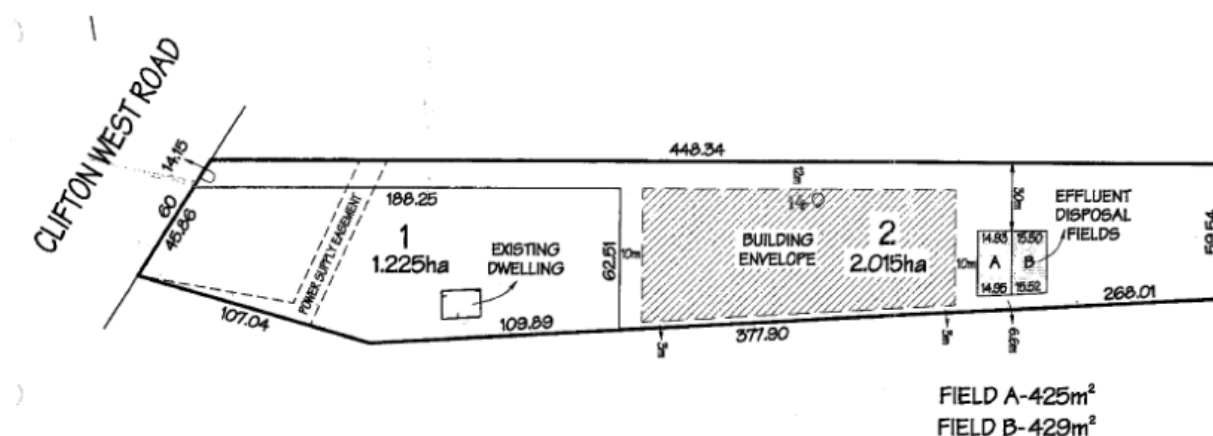


Figure 1 - Extract of the building envelope registered against the Agreement.

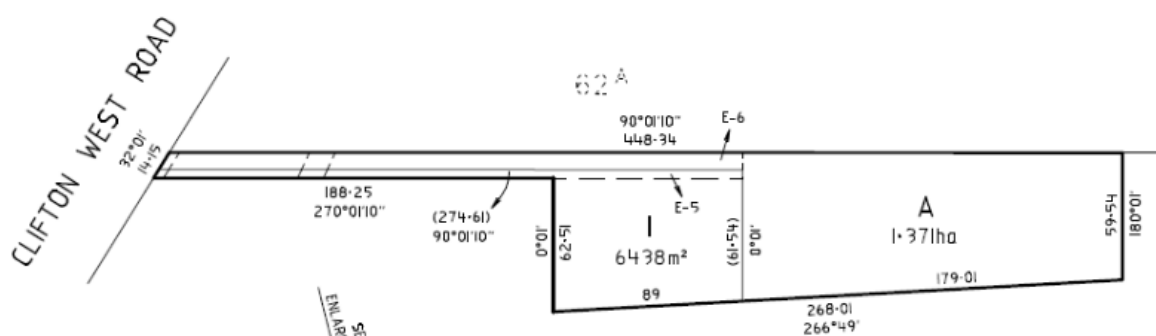


Figure 2 - Current Plan of subdivision (Lots 1 and A PS622397, created by 354/2015/P)

The Building Envelope was nominated on the Proposed Subdivision Plan in response to the provisions of the Low Density Residential Zone of the East Gippsland Planning Scheme. The provisions of the Low Density Residential Zone do not require the Building Envelope to be registered on title under an Agreement, although this was the common practice of Council at the time Planning Permit 150/2008/P was issued.

There is currently a proposal for a two-lot subdivision as demonstrated in **Figure 3**. It is noted that each lot will continue to have frontage (approximately 4.7 metres to each) to Clifton West Road, and that access is achieved through a series of carriageway easements, and that the majority (E-6 on the existing plan of subdivision) is currently a part of Lot A.

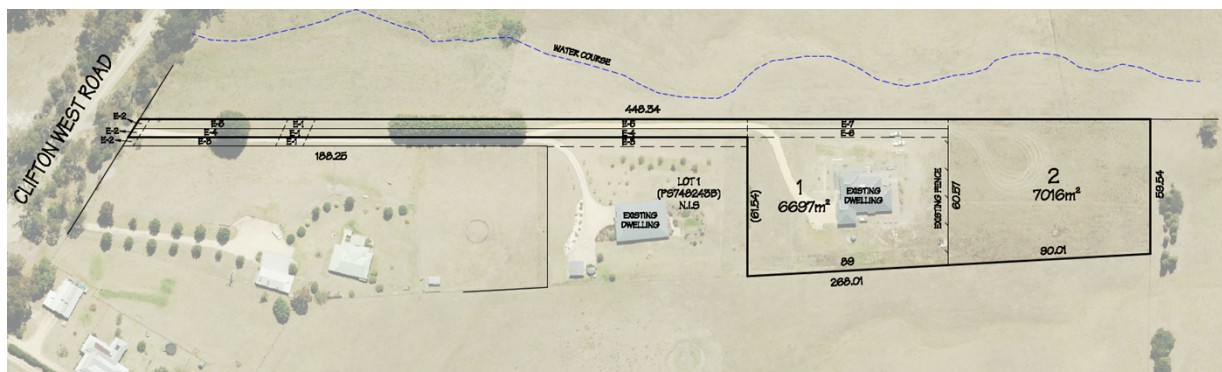


Figure 3 – Proposed Plan of Subdivision (planning application 323/2021/P)

The subject land does not contain any significant site constraints or characteristics that necessitated the registration of the Agreement on title to the land. Under current practices Council receives the building envelope plan for demonstrative purposes only, to ensure the requirements of the zone provisions can be satisfied.

On this basis, officers consider that the request to end the Agreement is reasonable, however, given the objections received to date, would not make a determination for permit 323/2021/P until the matter is resolved.

Legislation

The implications of this report have been assessed and are not considered likely to breach or infringe upon the human rights detailed in the Victorian Government's Charter of *Human Rights and Responsibilities Act* 2006.

The *Planning & Environment Act* 1987 pursuant to section 178A provides the opportunity for Council to consider ending an agreement, either wholly or in part, without the consent of all persons who are bound by the agreement.

The applicant is seeking to end section 173 Agreement AG108268G wholly as it applies to 236 Clifton West Road, Wy Yung; however, the consent of all parties bound by the agreement has not been obtained. It is noted that both objectors to the proposal were sent requests to provide consent, with a letter addressed to Council's Statutory Planning Coordinator. These letters originated from the proponent, not Council. Had the consent of all parties been obtained, the matter can be considered under Delegation in accordance with the Delegations Register and *Planning Permit Applications Delegation Policy*.

Where the consent of all parties has not been obtained, section 178B (2) of the *Planning & Environment Act* 1987 provides the framework for the proposal to be assessed and considered by Council.

The proposal to end the Section 173 Agreement has been submitted pursuant to section 178A of the Act. A proposal submitted under this section of the Act, pursuant to section 178B must be considered against set requirements. An assessment against these requirements is as follows:

The purpose of the Agreement

The purpose of the agreement was to implement a building envelope approved under permit 150/2008/P. There was no mandatory requirement at that time to implement a building envelope, but it was an application requirement (and still is) in the Low Density Residential Zone to demonstrate that a building envelope can be achieved.

Whether and why the Agreement is no longer required

There is no environmental constraint that prevents development on the balance portion of the allotment, where a building envelope would be warranted to avoid environmental harm. It was possible to develop a dwelling within the building envelope on the current Lot A, however it would not be possible to construct a further dwelling on the land if it were to be subdivided, unless the Agreement is ended. It is the landowner's intent to subdivide and dispose of the remainder of the land.

Whether the ending of the Agreement would disadvantage any person, whether or not a party to the Agreement

It is considered that the ending of the Agreement itself would not disadvantage any person whether party to the Agreement or not, however the proposed subdivision has attracted objections, as has this request for ending of the agreement.

The land originally subject to the agreement has been further subdivided in 2015, and the ending of the agreement was considered at that time. At the time, the land burdened by the agreement was in single ownership and the consent of all parties to the agreement was provided, meaning that the matter could be considered under delegation. Since that time, the property has been transferred, and the new owner to the two neighbouring lots are objecting to the grant of the permit for subdivision of the land and to the ending of the agreement.

The objectors raise the following concerns:

1. Privacy reduced from increased traffic
2. Dust and noise from increased traffic
3. Management of the carriageway area

Officer assessment of the concerns raised is:

1. Privacy reduced from increased traffic

Setbacks from the carriageway driveway to the houses at 230 and 234 Clifton West Road are approximately 40 and 30 metres respectively. Some screening vegetation has been planted; however, it would be possible for further planting to occur with no permit requirements. The driveways were established when these properties were purchased. The standard assessment is that an additional lot/dwelling would generate 10 vehicle movements per day. This is not a significant departure from the existing movements (up to 30 vehicle movements per day on average past the first house, and 20 past the second house).

2. Dust and noise from increased traffic

As stated above, the increase in traffic is not considered to be significant, and although there are issues now, these matters can be resolved between the owners as a civil matter, whether or not the proposed subdivision is granted or if the agreement is ended.

3. Management of the carriageway area

The majority of the driveway sits within the property owned by one objector, owner of 234 Clifton West Road, however the majority of the land along this 'axe-handle' is owned by the proponent (236 Clifton West Road). Issues arising from the lack of cooperation for management and maintenance of the carriageway areas are a civil matter.

The recommendation to end the agreement will not increase the number of individuals involved in any civil dispute. The subdivision will not change the civil matters but will afford the option for a future landowner to become involved. It is recognised that this is not an ideal outcome, however the past determinations, not the current proposals would have been the opportune time to resolve issues, such as by creating a road or common property with a more sensible management arrangement. The proponents ultimately bear the responsibility, as it was their series of subdivisions which created the current arrangements.

The reasons why the responsible authority entered into the Agreement

Council entered into the Agreement as a practice of the day to enforce a building envelope that should only have been considered but should not have been enforced due to there not being any significant environmental constraints on the land. This practice has ceased. Had the application which resulted in the building envelope been made today, the requirement would not be made.

Any relevant permit or other requirements the land is subject to under the Subdivision Act 1988.

Officers have not yet determined 323/2021/P to prevent conflict between determinations should the ending of the agreement not be supported. Should Council resolve in accordance with the officer's recommendation, a notice of decision to grant the planning permit will be issued concurrently, and both matters can be reviewed by VCAT if an application for review is made by the objectors.

Any other prescribed matter

The Act is prescriptive as to the processing and consideration of proposals to end section 173 Agreements. In accordance with section 178E (3) where objections are made under section 178D, the responsible authority may, after considering the matters in section 178B – resolve to issue a Notice of Decision to End the Agreement in accordance with the proposal.

Collaborative Procurement

Not Applicable

Council Plan

This report has been prepared and aligned with the following strategic objectives set out in the Council Plan 2021-2025:

Strategic Objective 2: 2.1 Statutory and strategic planning for land use delivers sustainable outcomes that balance the need for growth with the enhancement of our lifestyle, character, the built and natural environment.

Council Policy

There is no specific Council policy established for consideration of these matters.

Options

For 236 Clifton West Road, Wy Yung there are alternative options, including considering whether it is appropriate to give in-principle support based on objections which have been received to the proposed subdivision. In considering the options, giving in-principle support to the proposal does not give finality to the responsible authority's decision, it merely facilitates the engagement process.

It is expected that objections will be made, and that the applicant will respond to those objections and make a case to Council in the final determination. If in-principle support is not granted, then only the applicant can request a review of the determination in the early stage of the process. If notice is given and a determination is made, then neighbours can also respond to or appeal the determination.

Resourcing

Financial

There are no financial implications.

Plant and equipment

Nil

Human Resources

Assessment is by planning department officers.

Risk

The risks of this proposal have been considered and there is relatively low risk in the determinations as recommended.

Economic

The proposal relates to a proposed land subdivision, creating one additional lot suitable for a dwelling. The ending of the agreement will remove a barrier to that development.

Social

Ending the Agreement is not likely to have a negative impact on the wider community.

Consultation during the approval process for the Planning Permit has assessed future amenity impacts.

Environmental

The proposal will not have any significant environmental impacts.

Climate change

This report is assessed as having no direct impact on climate change.

Engagement

The procedure to assess proposals to end section 173 agreements under section 178A of the *Planning and Environment Act 1987* directs that notice of the proposal to all parties bound by the agreement is undertaken after obtaining 'in principle' support.

Notice took place in the form of direct mail to all persons who own land that has the same agreement included on their title, and to surrounding landowners. Notices were sent by the proponent in accordance with the instructions of the responsible authority and a statutory declaration has been provided advising that the recipients were advised that the responsible authority would not make a determination prior to 8 December 2021.

Two objections have been received by Council objecting to the request to end the Agreement, which are provided at **Attachment 2**. The objections were lodged by owners of adjacent property, one of which is part of the land subject to the Agreement.

The specific considerations given to the grounds, where relevant to the ending of the Agreement, are contained within this report in the '*Legislation*' section.

Attachments

1. Request to end Agreement [**5.3.1.1** - 17 pages]
2. Objections [**5.3.1.2** - 6 pages]

Crowther & Sadler^{pty, Ltd.}

A.B.N. 24 006 331 184

LICENSED SURVEYORS & TOWN PLANNERS

Our ref: 18493AMP

152 Macleod St.
PO Box 722,
Bairnsdale, VIC 3875P: 5152 5011
F: 5152 5705

E: contact@crowthersadler.com.au

30 June 2021

The Planning Coordinator
East Gippsland Shire Council
Via Email: planning@egipps.vic.gov.au

Attention: Mr. Robert Pringle

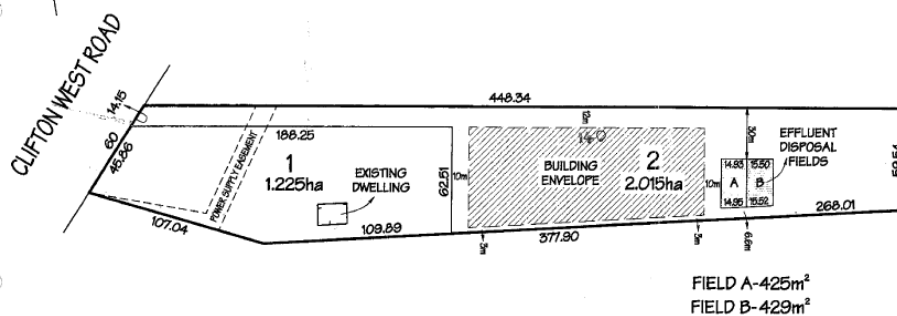
Dear Robert,

**Re: Request to end Legal Agreement AG108268G
Lot A on PS748243B
236 Clifton West Road, Wy Yung**

We refer to Planning Application for Two Lot Subdivision of the abovementioned land which was lodged with Council earlier today and respectfully request Council's consent to the ending of Legal Agreement AG108268G as currently registered on title.

Purpose for Removal

The purpose of the Agreement was to ensure any buildings erected on the subject land were constructed within the Building Envelope as shown on the Plan endorsed as part of Planning Permit 150/2008/P.

*Extract of Plan referenced within the Agreement*

The Building Envelope was nominated on the Proposed Subdivision Plan in response to the provisions of the Low Density Residential Zone of the *East Gippsland Planning Scheme*.



FS 520900



MEMBER FIRM

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Principal: Michael J. Sadler, L.S., Dip Surv, M.I.S., MAICD

The provisions of the Low Density Residential Zone do not require the Building Envelope to be registered on title under an Agreement, although this was the common practice by Council at the time Planning Permit 150/2008/P was issued.

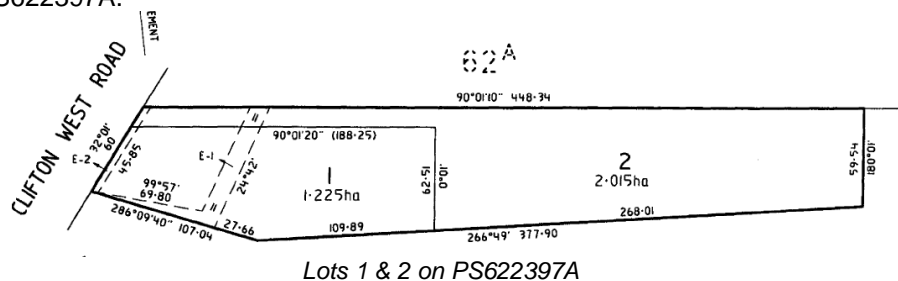
In addition, the subject land does not contain any significant site constraints or characteristics that necessitated the registration of the Agreement on title to the land.

We note that under current practices Council would most likely receive the Building Envelope Plan for demonstrative purposes, to ensure the requirements of the Zone provisions could be satisfied.

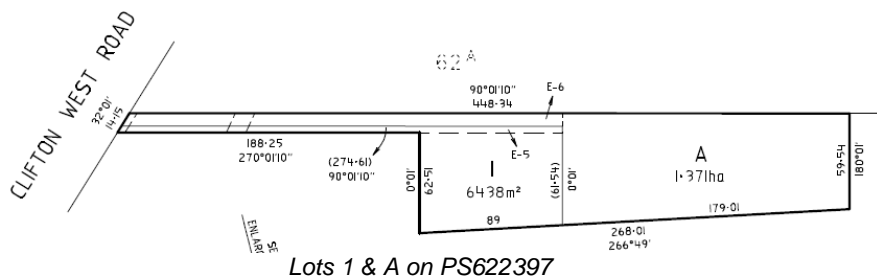
We believe the Agreement is an unnecessary restriction on the land that is inconsistent with current Planning practice and will be at conflict with our client's desire to undertake further subdivision in accordance with relevant Planning Scheme provisions. We therefore believe it is appropriate to end the Agreement.

Background

Agreement AG108268G was first registered on the parent title (Lot 1 on PS306491X) as required by Condition 3 of Planning Permit 150/2008/P. This earlier Permit relates to a two lot subdivision which created Lots 1 & 2 on PS622397A.

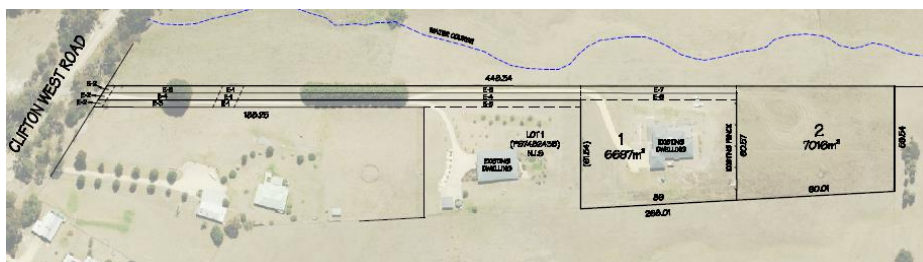


Our client subsequently subdivided Lot 2 on PS622397A to create Lots 1 & A on PS748243B under Planning Permit 354/2015/P. During this earlier subdivision Council provided consent to end the Agreement from Lot 2 on PS622397 however the formal removal of the record never actually occurred.



18493 EGSC end S173LA.doc

Now that the Application has been lodged for the subsequent Two Lot Subdivision it is therefore necessary to remove the Agreement to ensure that there is ample opportunity for future development to occur on the land consistent with the provisions of the *East Gippsland Planning Scheme*.



Proposed Subdivision Layout

The Request

Our request to end the Agreement as it applies to the subject land has been made pursuant to Section 178A(1)(b) of the *Planning & Environment Act 1987*.

Section 178A(2)(b) requires the application to be “*accompanied by the information required by the regulations*”. In accordance with the requirements of Regulation 55 of the *Planning & Environment Regulations 2015* we provide the following requisite information:

Regulation 55(a) - we confirm the Applicant for the request to end the Agreement is Mr. Brendan and Mrs Madelaine Schumann, C/- Crowther & Sadler Pty. Ltd of 152 Macleod Street, Bairnsdale, Victoria, 3875. Phone number for the Applicant is 5152 5011.

Regulation 55(b) – the Agreement is to be ended as it applies to 236 Clifton West Road, Wy Yung, formally described as Lot A on PS748243B.

Regulation 55(c) - not applicable to the subject Application as the proposal does not seek to amend the Agreement.

Regulation 55(d)(i) – not applicable to the subject Application as the proposal does not seek to end the Agreement in part.

Regulation 55(d)(ii) – the proposal seeks to end the Agreement as applying to part of the land. The Agreement is to be ended as it applies to 236 Clifton West Road, Wy Yung, formally described as Lot A on PS748243B.

Regulation 55(d)(iii) – the Agreement is an unnecessary restriction on the land that is inconsistent with current practice and will be at conflict with our Client’s desire to undertake further subdivision in accordance with the provisions of the *East Gippsland Planning Scheme*.

To assist with Council's consideration of our request in accordance with Section 178(B)(2) of the Act, we are pleased to provide the following information.

Purpose of the Agreement

The purpose of the Agreement was to ensure any buildings erected on the subject land were constructed within the Building Envelope as shown on the plan endorsed as part of Planning Permit 150/2008/P.

Why the Agreement is no longer required

The nominated Building Envelope was shown on the Plan as required by the provisions of the Low Density Residential Zone under the *East Gippsland Planning Scheme*.

The subject land does not contain any constraints that necessitate limiting the construction of buildings. The provisions of the Low Density Residential Zone do not require the Building Envelope to be registered on title under an Agreement although this was common practice by Council at the time Planning Permit 150/2008/P was issued.

Under current practices Council would most likely receive the Building Envelope Plan for demonstrative purposes, to ensure the requirements of the Zone provisions could be satisfied.

The Agreement is considered to be an unnecessary restriction on the land that is inconsistent with current Planning practice and will be at conflict with our Planning Scheme provisions. It is therefore appropriate that it be ended.

Whether the ending of the agreement would disadvantage any person, whether or not a party to the agreement

The ending of the Agreement will not give rise to any form of disadvantage to any other person.

The ending of the Agreement will simply enable future development to occur on the land consistent with the provisions of the Low Density Residential Zone as currently applying.

Existing development contained on adjoining properties is situated within close proximity to Clifton West Road. Future residential development on the subject land within proposed Lot 2 will therefore be offset generously from neighbouring dwellings.

The reasons why the responsible authority entered into the agreement

The Agreement was appropriately entered into by Council at the time in accordance with Condition 3 on Planning Permit 150/2008/P.

Any relevant permit or other requirements the land is subject to under the Subdivision Act 1988

None applicable.

Any other prescribed matter

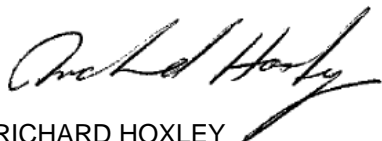
We are not aware of any other prescribed matter which is relevant to the request to end the Agreement as it applies to the subject land.

Section 178A(2)(c) of the Act requires an application of this type to be accompanied by the requisite fee as prescribed by the *Planning & Environment (Fees) Regulations 2016*.

A cheque made payable to the *East Gippsland Shire Council* in the amount of \$659.00 (Regulation 16) will be made delivered to Council later today to facilitate the processing of the matter at hand.

We trust this information provides sufficient detail to facilitate Council's commencement of the process associated with the ending of the Agreement as it applies to the subject land. We respectfully await Council's timely advice regarding the scheduling of this matter on the next available Ordinary Council Meeting agenda.

Regards,



RICHARD HOXLEY
Senior Planner

Encl. Copy of Endorsed Proposed Subdivision Plan V1 (12928)
Copy of Title (Lot A on PS748243B)
S173LA AG108268G



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REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958

Page 1 of 1

VOLUME 11817 FOLIO 583

Security no : 124090874127D
Produced 30/06/2021 02:54 PM

LAND DESCRIPTION

Lot A on Plan of Subdivision 748243B.
PARENT TITLE Volume 11118 Folio 272
Created by instrument PS748243B 07/09/2016

REGISTERED PROPRIETOR

Estate Fee Simple
Joint Proprietors
MADELAINE IRENE SCHUMANN
BRENDAN ROBERT SCHUMANN both of 234 CLIFTON WEST ROAD WY YUNG VIC 3875
PS748243B 07/09/2016

ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE AR830246S 11/01/2019
AFSH NOMINEES PTY LTD

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

AGREEMENT Section 173 Planning and Environment Act 1987
AG108268G 29/09/2008

DIAGRAM LOCATION

SEE PS748243B FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

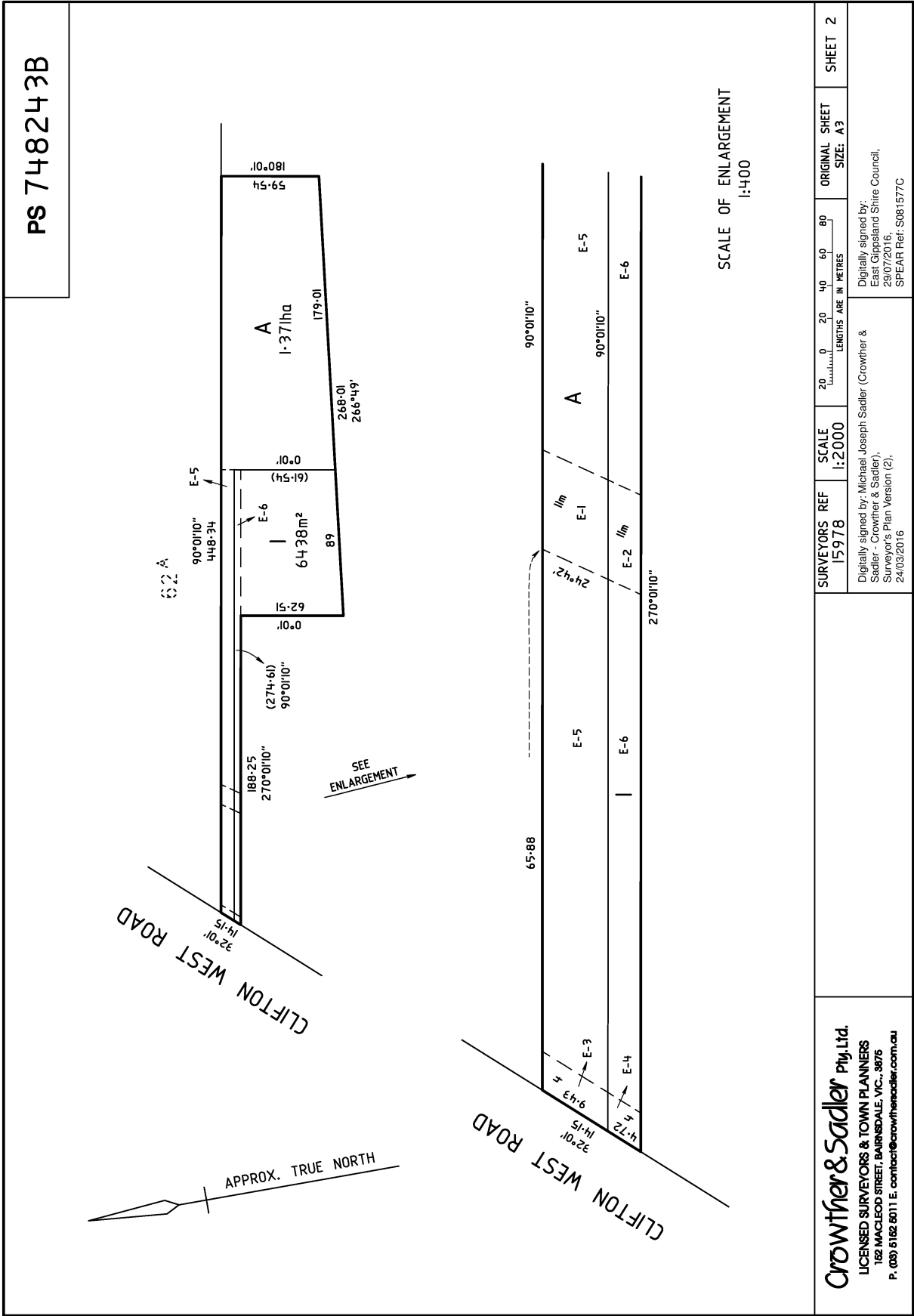
ADMINISTRATIVE NOTICES

NIL

eCT Control 18440T MSA NATIONAL
Effective from 11/01/2019

DOCUMENT END

PLAN OF SUBDIVISION		EDITION 1	PS 748243B	
LOCATION OF LAND PARISH: WY YUNG TOWNSHIP: _____ SECTION: _____ CROWN ALLOTMENT: 61A (PART) CROWN PORTION: _____ TITLE REFERENCE: VOL IIII8 FOL 272 LAST PLAN REFERENCE: LOT 2 - PS622397A POSTAL ADDRESS: 234 CLIFTON WEST ROAD, (at time of subdivision) WY YUNG 3875 MGA CO-ORDINATES: E: 553 700 ZONE: 55 (of approx centre of land N: 5819 550 GDA 94 in plan)		Council Name: East Gippsland Shire Council Council Reference Number: PS748243B Planning Permit Reference: 354/2015/P SPEAR Reference Number: S081577C Certification This plan is certified under section 6 of the Subdivision Act 1988 Statement of Compliance This is a statement of compliance issued under section 21 of the Subdivision Act 1988 Public Open Space A requirement for public open space under section 18 of the Subdivision Act 1988 Has been made and the requirement has been satisfied at Certification Digitally signed by: Aaron David Hollow for East Gippsland Shire Council on 29/07/2016		
VESTING OF ROADS AND/OR RESERVES		NOTATIONS		
IDENTIFIER	COUNCIL/BODY/PERSON			
NIL	NIL			
NOTATIONS				
DEPTH LIMITATION	15.24 METRES BELOW THE SURFACE			
SURVEY: This plan is based on survey. STAGING: This is not a staged subdivision. Planning Permit No. 354/2015/P This survey has been connected to permanent marks No(s). In Proclaimed Survey Area No.				
EASEMENT INFORMATION				
LEGEND: A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)				
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of
E-1, E-2 E-3, E-4 E-1, E-3, E-5 E-2, E-4, E-6	ELECTRICITY SUPPLY WATER SUPPLY CARRIAGEWAY CARRIAGEWAY	11 4 SEE DIAG SEE DIAG	PS306491X PS622397A THIS PLAN THIS PLAN	S.E.C.V. EAST GIPPSLAND REGION WATER AUTHORITY LOT 1 ON THIS PLAN LOT A ON THIS PLAN
Crowther & Sadler Pty. Ltd. LICENSED SURVEYORS & TOWN PLANNERS 182 MACLEOD STREET, BAIRNSDALE, VIC., 3875 P. (03) 5182 5011 E. contact@crowthersadler.com.au		SURVEYORS FILE REF: 15978 Digitally signed by: Michael Joseph Sadler (Crowther & Sadler - Crowther & Sadler), Surveyor's Plan Version (2), 24/03/2016		ORIGINAL SHEET SIZE: A3 SHEET 1 OF 2 SHEETS PLAN REGISTERED TIME: 12:48 DATE: 07/09/16 B.J.S. Assistant Registrar of Titles



Delivered by LANDATA®, timestamp 30/06/2021 14:54 Page 1 of 9

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AG108268G

29/09/2008 \$99.90 173


Titles Office Use Only

Lodged by: Wards Barristers & Solicitors Pty Ltd
 DX 82203 Bairnsdale

Code: 3556G



**VICTORIA APPLICATION BY A RESPONSIBLE AUTHORITY under Section 181
 Planning and Environment Act 1987 for ENTRY OF A MEMORANDUM
 OF AGREEMENT under Section 173 of the Act.**

The Responsible Authority under the Planning Scheme having entered into an Agreement with the parties named for the land described requires that a memorandum of the Agreement be entered on the Certificate(s) of Title to the land referred to.

LAND

Certificate of Title Volume 9995 Folio 071

ADDRESS OF THE LAND

230 Clifton West Road, Clifton Creek 3875

RESPONSIBLE AUTHORITY

East Gippsland Shire Council, 273 Main Street, Bairnsdale 3875

PLANNING SCHEME

East Gippsland Shire Council Planning Scheme

AGREEMENT DATE

22/9/2008

AGREEMENT WITH

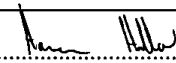
William Michael Flanagan &
 Deborah Rae Flanagan

A copy of the Agreement is attached to this Application.

Signature for the Responsible Authority

Name of Officer

Date


 AARON HOLLOW - MANAGER DEVELOPMENT
 23/09/2008

Date 22/09/2008

AG108268G

29/09/2008 \$99.90 173



**Agreement under Section 173
of the Planning and Environment Act 1987**

Subject Land:

230 Clifton West Road, Clifton Creek

**East Gippsland Shire Council
and**

**William Michael Flanagan &
Deborah Rae Flanagan**

AG108268G

29/09/2008 \$99.90 173



Table of Contents

1.	DEFINITIONS	4
2.	INTERPRETATION	4
3.	SPECIFIC OBLIGATIONS OF THE OWNER.....	5
4.	FURTHER OBLIGATIONS OF THE OWNER	5
4.1	Notice and Registration.....	5
4.2	Further actions.....	5
4.3	Council's Costs to be Paid	5
5.	AGREEMENT UNDER SECTION 173 OF THE ACT	6
6.	OWNER'S WARRANTIES	6
7.	SUCCESSORS IN TITLE	6
8.	GENERAL MATTERS.....	6
8.1	Notices	6
8.2	Service of Notice.....	6
8.3	No Waiver.....	7
8.4	Severability	7
8.5	No Fettering of Council's Powers	7
9.	COMMENCEMENT OF AGREEMENT	7

[12347: 4914988v1]

Agreement under Section 173 of the Planning and Environment Act 1987

DATE / /2008

AG108268G



BETWEEN

EAST GIPPSLAND SHIRE COUNCIL
of Corporate Centre, 273 Main Street, Bairnsdale

(Council)

AND

**WILLIAM MICHAEL FLANAGAN &
DEBORAH RAE FLANAGAN**
of 230 Clifton West Road, Clifton Creek

(Owner)

RECITALS

- A. Council is the Responsible Authority pursuant to the Act for the Planning Scheme.
- B. The Owner is or is entitled to be the registered proprietor of the Subject Land.
- C. On 18th July 2008 Council issued Planning Permit No. 150/2008/P allowing the Subject Land to be subdivided into two Lots in accordance with a plan to be endorsed under condition 3 of the Planning Permit (the Endorsed Plan). Condition 3 of the Planning Permit requires the Owner to enter into this Agreement to provide for the matters set out in that condition. A copy of the Planning Permit is available for inspection at Council offices during normal business hours upon giving the Council reasonable notice.
- D. Condition 3 of the Planning Permit provides that:

“Before the issue of a Statement of Compliance, the owner of the land must enter into an agreement with the responsible authority in accordance with Section 173 of the Planning & Environment Act 1987, which will covenant that:

 - a) All future development on Lot 2 on the Plan of subdivision approved by planning permit 150/2008/P must be within the nominated building envelope as attached.

The agreement will bind the applicant as the owner and shall run with the land so that all successors in title are bound by the agreement. This agreement will be prepared by the applicant, at the applicants cost and to the satisfaction of the responsible authority, and shall be registered on the title in accordance with Section 181 of the Planning and Environment Act 1987.”
- E. As at the date of this Agreement, the subject land is not encumbered by a Mortgage.
- F. The parties enter into this Agreement:
 - F.1 to give effect to the requirements of the Planning Permit; and

[12347: 4914988v1]

F.2 to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

THE PARTIES AGREE

DEFINITIONS



In this Agreement the words and expressions set out in this clause have the following meanings unless the context admits otherwise:

Act means the *Planning and Environment Act 1987*.

Agreement means this agreement and any agreement executed by the parties expressed to be supplemental to this agreement.

Building has the same meaning as in the Act and includes dwellings, swimming pools, carports and tennis courts.

Building Envelope means any area delineated and identified on the Endorsed Plan as a 'building envelope' or the like.

Endorsed Plan means the plan endorsed with the stamp of Council from time to time as the plan which forms part of the Planning Permit. A copy of the Endorsed Plan is attached to this Agreement and marked 'A'.

lot means a lot on the Endorsed Plan.

Mortgagee means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as Mortgagee of the Subject Land or any part of it.

Owner means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as proprietor or proprietors of an estate in fee simple of the Subject Land or any part of it and includes a Mortgagee-in-possession.

party or parties means the Owner and Council under this Agreement as appropriate.

Planning Scheme means the East Gippsland Planning Scheme and any other planning scheme that applies to the Subject Land.

Subject Land means the land situated at 230 Clifton West Road, Clifton Creek being the land referred to in Certificate of Title Volume 9995 Folio 071 and any reference to the Subject Land in this Agreement includes any lot created by the subdivision of the Subject Land or any part of it.

INTERPRETATION

In this Agreement unless the context admits otherwise:

The singular includes the plural and vice versa.

A reference to a gender includes a reference to each other gender.

A reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law.

If a party consists of more than one person this Agreement binds them jointly and each of them severally.

A term used in this Agreement has its ordinary meaning unless that term is defined in this Agreement. If a term is not defined in this Agreement and it is defined in the Act it has the meaning as defined in the Act.

A reference to an Act, Regulation or the Planning Scheme includes any Acts, Regulations or amendments amending, consolidating or replacing the Act, Regulation or Planning Scheme.

The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.

The obligations of the Owner under this Agreement, will take effect as separate and several covenants which are annexed to and run at law and equity with the Subject Land provided that if the Subject Land is subdivided, this Agreement must be read and applied so that each subsequent owner of a lot is only responsible for those covenants and obligations which relate to that owner's lot.

SPECIFIC OBLIGATIONS OF THE OWNER

The Owner covenants and agrees that the Owner will not build, construct or erect or cause or permit to be built, constructed or erected any Building on the Subject Land or any part of the Subject Land outside a Building Envelope without the prior written consent of Council.

FURTHER OBLIGATIONS OF THE OWNER

Notice and Registration

The Owner further covenants and agrees that the Owner will bring this Agreement to the attention of all prospective purchasers, lessees, mortgagees, chargees, transferees and assigns.

Further actions

The Owner further covenants and agrees that:

the Owner will do all things necessary to give effect to this Agreement;

the Owner will make application to the Registrar of Titles to make a recording of this Agreement in the Register on the Certificate of Title of the Subject Land in accordance with Section 181 of the Act and do all things necessary to this to be done including signing any further agreement, acknowledgment or document or procuring the consent to this Agreement of any mortgagee or caveator to enable the recording to be made in the Register under that section.

AG108268G

29/09/2008 \$99.90 173



Council's Costs to be Paid

The Owner further covenants and agrees that the Owner will immediately pay to Council, Council's reasonable costs and expenses (including legal expenses) of and

[12347: 4914988v1]

incidental to the preparation, drafting, finalisation, engrossment, execution, registration and enforcement of this Agreement which are and until paid will remain a debt due to Council by the Owner.

AGREEMENT UNDER SECTION 173 OF THE ACT

Council and the Owner agree that without limiting or restricting the respective powers to enter into this Agreement and, insofar as it can be so treated, this Agreement is made as a Deed pursuant to Section 173 of the Act, and the obligations of the Owner under this Agreement are obligations to be performed by the Owner as conditions subject to which the Subject Land may be used and developed pursuant to the Planning Permit.

OWNER'S WARRANTIES

Without limiting the operation or effect which this Agreement has, the Owner warrants that apart from the Owner and any other person who has consented in writing to this Agreement, no other person has any interest, either legal or equitable, in the Subject Land which may be affected by this Agreement.

SUCCESSORS IN TITLE

Without limiting the operation or effect that this Agreement has, the Owner must ensure that, until such time as a memorandum of this Agreement is registered on the title to the Subject Land, successors in title shall be required to:

give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement; and

execute a deed agreeing to be bound by the terms of this Agreement.

GENERAL MATTERS

Notices

A notice or other communication required or permitted to be served by a party on another party must be in writing and may be served:

by delivering it personally to that party;

by sending it by prepaid post addressed to that party at the address set out in this Agreement or subsequently notified to each party from time to time; or

by sending it by facsimile provided that a communication sent by facsimile shall be confirmed immediately in writing by the sending party by hand delivery or prepaid post.

Service of Notice

A notice or other communication is deemed served:

if delivered, on the next following business day;

AG108268G

29/09/2008 \$99.90 173



if posted, on the expiration of 7 business days after the date of posting; or

if sent by facsimile, on the next following business day unless the receiving party has requested retransmission before the end of that business day.

No Waiver

Any time or other indulgence granted by Council to the Owner or any variation of the terms and conditions of this Agreement or any judgment or order obtained by Council against the Owner will not in any way amount to a waiver of any of the rights or remedies of Council in relation to the terms of this Agreement.

Severability

If a court, arbitrator, tribunal or other competent authority determines that a word, phrase, sentence, paragraph or clause of this Agreement is unenforceable, illegal or void then it must be severed and the other provisions of this Agreement will remain operative.

No Fettering of Council's Powers

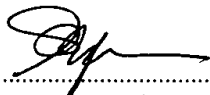
It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of Council to make any decision or impose any requirements or conditions in connection with the granting of any planning approval or certification of any plans of subdivision applicable to the Subject Land or relating to any use or development of the Subject Land.

COMMENCEMENT OF AGREEMENT

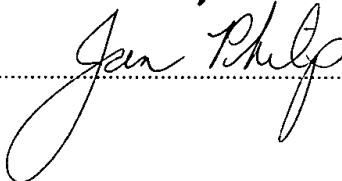
Unless otherwise provided in this Agreement, this Agreement commences from the date of this Agreement.

SIGNED, SEALED AND DELIVERED as a Deed by the parties on the date set out at the commencement of this Agreement.

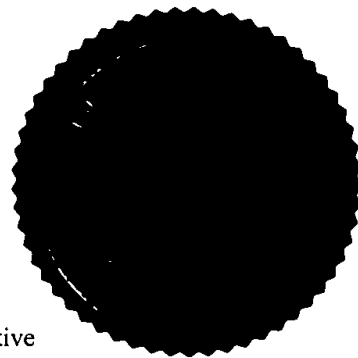
The Common Seal of the East Gippsland Shire Council was hereunto affixed on the 22nd day of September, in the presence of: 2008

.....


Chief Executive

.....


Witness



AG108268G



[12347: 4914988v1]

SIGNED, SEALED AND DELIVERED)
by the said WILLIAM MICHAEL FLANAGAN)
in the presence of:)

W.F.
x *[Signature]*

Witness: *[Signature]*

SIGNED, SEALED AND DELIVERED)
by the said DEBORAH RAE FLANAGAN)
in the presence of:)

DR
x *[Signature]*

Witness: *[Signature]*

AG108268G



Objections – 2/2021/AGR – End legal agreement AG108268G - 236 Clifton West Road Wy Yung

Objector	Lodged	What are the reasons for objection	How would the objector be affected?
Craig & Carole Sorby	8/12/21	<p>Our main reason is privacy. It is already a concern as E-4 & E-5 The Existing Carriageway is only 28 metres from my lounge rooms sliding door and joining windows. This is our main living area and we sit outside this area, as it faces north and gets the sun all year round.</p> <p>There is also a safety and health issue, created by dust. This will only increase with the extra traffic.</p>	<p>We already have sections of soil erosion on E-4 and E-5. The existing carriageway. (Neighbour) Drives his semi trailer, b-double down the carriageway. (Neighbour) and I have talked about this issue. Last year he asked me to help him repair it. To this day nothing has been done and the problem is only escalating. This is an ongoing issue that needs to be addressed with the E.P.A.</p> <p>Nobody helps me with maintaining E-4 and E-5, the existing carriageway. I mow, whipper snip, hand and spray weed. I pay for all the fuel and chemicals. On talking to (Neighbour) about contributing costs "That was such a big deal". Alas no sharing of costs. Add more people using the carriageway, will only cause more anger and frustration.</p> <p>My mother is 77 years old and I am 57 years old and our plan was to spend the rest of our lives at this property. If this subdivision is granted, we will move. As I have a severe mental illness and my mother has physical limitations, moving is the last thing we want to do.</p> <p>(Other neighbour), my neighbour enquired with her real estate agent who believes less people would look at the property. It would make it much more difficult to sell, as people do not like sharing carriageways. To be honest, if we had of known all the trouble sharing a carriageway would cause, we would never have purchased the property. We (sought) legal advice but (were denied service from a local firm due to the firm already representing the neighbours).</p> <p>My mother and I do not agree with ending the agreement from Lot A on PS748243B.</p>

Objector	Lodged	What are the reasons for objection	How would the objector be affected?
			Please read letter (addressed to) the statutory planning coordinator, which we refuse to sign. This will be taken to VCAT if approved by Council.
<p>Attachment – Note from a neighbour (undated, unsigned) Cassie – my real estate agent – Next week I am going to – show her the aerial view.</p> <p>After a quick conversation, she believes it may limit the amount of people that would view the property, and therefore, devalue it.</p> <p>My conveyancer said: They need our signatures to go ahead. We do not have to sign.</p> <p>If we are served with papers, we would then need to seek legal advice.</p>			
Photos:			

Objector	Lodged	What are the reasons for objection	How would the objector be affected?
 <p data-bbox="203 1318 1211 1350">(Text above: Main room with sliding door and windows – driveway marked E-4 & E-5)</p>			

Objector	Lodged	What are the reasons for objection	How would the objector be affected?
			

Objector	Lodged	What are the reasons for objection	How would the objector be affected?
 An aerial photograph of a rural property. The image shows a large green field with a dirt road or track running diagonally from the top left towards the bottom right. There are several buildings and structures scattered across the field. Handwritten labels in white ink are visible: '230' near a building on the left, '234' near a building in the center, and '236' near a building on the right. A handwritten note in the bottom right corner reads 'Proposed Subdivisions'. The overall image has a slightly grainy, high-resolution appearance typical of aerial photography.			

Objector	Lodged	What are the reasons for objection	How would the objector be affected?
Julie Dinsdale	8/12/21	<p>For the same reasons objected to the two-lot subdivision:</p> <p>Privacy – more people going past my property. Have had major trouble with dust from driveway from cars using E-4 and E-5, the existing carriageway. This has caused arguments and ill feelings. I am also in total support of my neighbours at 234 Clifton West Road, Wy Yung (Neighbours). On speaking to my real estate agent, Casey Skipp, she believes it would make their property much harder to sell. People do not like sharing driveways, especially if your house is the first to be driven past.</p>	<p>For the same reasons objected to the two-lot subdivision:</p> <p>Creating more ill feelings and arguments over the dust. Losing my neighbours, as they are considering selling if this subdivision proposal is granted. I do not agree with ending the agreement from Lot A on PS 748243B. Please see letter (addressed to) the statutory planning coordinator, which I refuse to sign.</p> <p>My conveyancer said they need Craig, Carole and my signatures for the subdivision to be approved. This will be taken to VCAT if (approved)</p>

5.3.2 Notice of Decision to Grant a Planning Permit 111/2020/P at 705 Metung Road, Metung

Authorised by General Manager Place and Community

Conflict of Interest

Officers preparing this report have no conflict of interest to declare.

Executive Summary

The planning application for a three-lot subdivision, creation of access to a road zone, category 1, creation of a carriageway easement, and buildings and works for a dwelling has attracted ten objections. A copy of the plans and supporting documents submitted with the application can be found via hyperlink at **Attachment 2**.

Following public notice, the application received ten objections. The objections are provided at **Attachment 3**. It is noted that the objections contain “petitions” with additional signatories, but which were collected and submitted by one of the registered objectors. As such, this is treated as a single objection for the purpose of the *Planning and Environment Act 1987*. The Planning Permit Applications Delegations Policy 2018 provides that the matter is referred to a Planning Consultation Meeting before being reported to Council for determination. The meeting was held on 8 November 2021. Minutes of the meeting are provided at **Attachment 5**.

A copy of referral authority responses is provided at **Attachment 4**.

A detailed assessment of the relevant planning scheme considerations and response to matters raised via objections is provided at **Attachment 6**. On balance, the officer assessment is that the proposal is suitable for approval, being generally consistent with the East Gippsland Planning Scheme, and as such a notice of decision to grant a planning permit is recommended, subject to the conditions recommended in **Attachment 1**.

Officer Recommendation

That Council:

- 1. receives and notes this report and all attachments pertaining to this report; and**
- 2. being the Responsible Authority and having considered all the relevant planning matters, determines that planning application 111/2020/P is consistent with the requirements and objectives of the East Gippsland Planning Scheme and therefore resolves to issue a Notice of Decision to Grant a Planning Permit for the three lot subdivision, creation of access to a road zone, category 1, creation of a carriageway easement, and buildings and works for a dwelling at 705 Metung Road, Metung subject to the conditions at Attachment 1.**

Background

Site Analysis

The subject land is formally described as Lot 3 on PS802735E and is approximately 28.83ha in area. The site has frontage and access to Metung Road to the south which is a sealed bitumen road maintained by the Department of Transport. The north-eastern corner of the property also has frontage to Rosherville Road. A portion of the land in this area is subject to the Low Density Residential Zone (LDRZ), where the bulk is zoned Rural Living Zone 2 (RLZ2).

An existing dwelling and associated outbuildings are contained within the property which obtain access from Metung Road. The south-eastern portion of the site also contains a wetland gully system which contains rainforest species.

There are a series of dams located across the property and the landform is quite steep in sections and generally quite undulating due to the presence of gully systems.

Subdivision Permit History

The land has been subdivided five times by the current owners (refer **Attachment 2, page 86**). Three of the subdivisions affected lots in the LDRZ only. Two of the subdivisions related to land in the RLZ, where “not in common ownership” subdivision allowed for re-alignment of boundaries and altered entitlements to subdivide in the Rural Zone (the former zone name) and subsequently the RLZ2.

Officers have discussed the appropriateness of the proposed subdivision with the applicant given:

- The whole of the subdivision has an expected outcome in terms of lot yield in the zone, including entitlements gained/transferred using additional lots/lot area.
- Agreement AL983190P (25/06/2015) which provides that the land is not to be subdivided into more than three lots, and subsequently the approval of Permit 399/2016/P which was a three-lot subdivision.

The applicant’s response is that the entitlements which were established through the subdivision process have not been exhausted. Specifically, Agreement AL983190P is contended to have been entered into to replace a former Agreement relating to the RLZ2 land, but the entitlements relating to the RLZ were miscalculated.

Notwithstanding that discussion, the proposal is presented to Council in relation to the merits, which are further described in **Attachment 6**. The *Planning and Environment Act 1987 Section 60* provides for matters for consideration in relation to the determination of a planning permit application. A S173 Agreement *may* be considered by the responsible authority, but unlike a restrictive covenant, does not prevent the grant of a permit if the Agreement is contravened.

Conditions of approval are recommended to provide for the ending of the current Section 173 Agreement and a new Section 173 Agreement to provide that Lot 3 must not be further subdivided until such time as the land is rezoned from Rural Living 3 to Low Density Residential or similar.

Proposal

Detailed plans and written submission in support of the application are available via the advertised application documents hyperlink in **Attachment 2**. The Application seeks approval for a Three Lot Subdivision to create

- Lot 1 of approximately 9677m² in area,
- Lot 2 of approximately 1.108ha in area and
- balance Lot 3 of approximately 26.752ha in area.

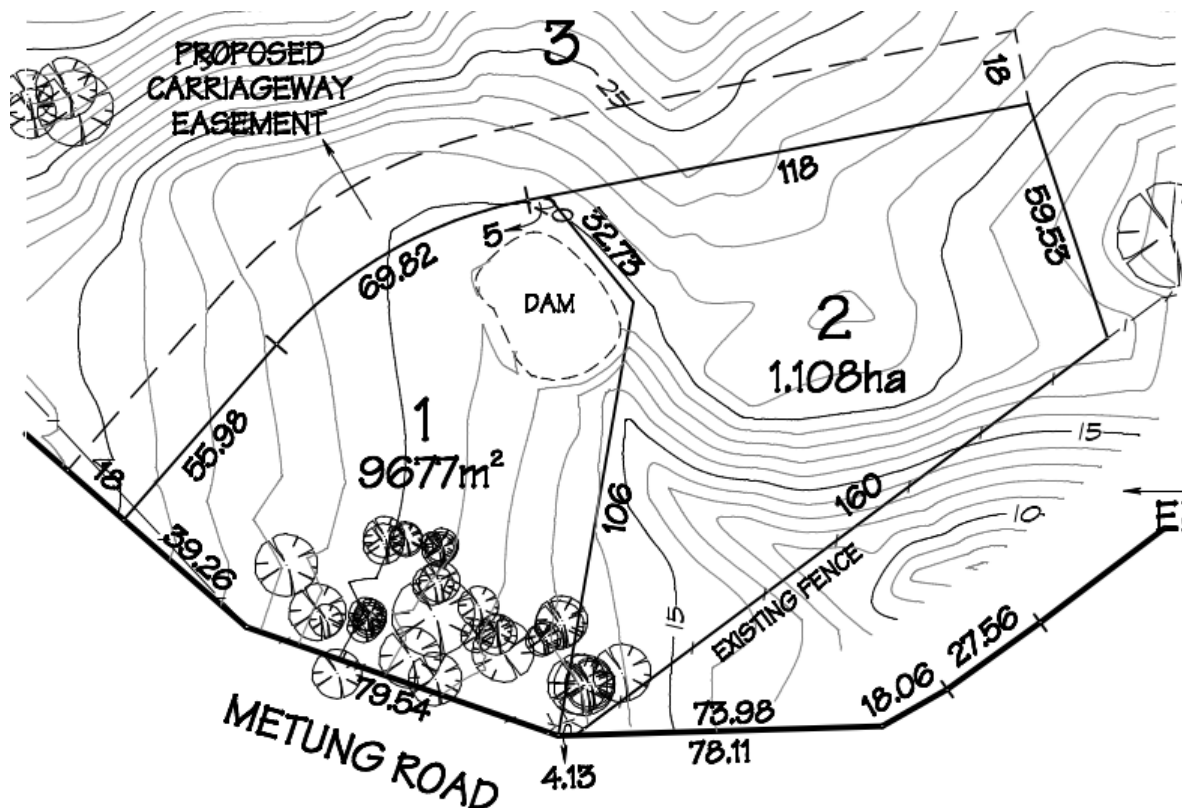


Figure 1: Proposed subdivision (detail area)

A carriageway easement has been nominated over Lot 3 in favour of Lots 1 and 2 to facilitate access to each of the proposed allotments. This carriageway easement corresponds partially with the existing driveway.

The existing driveway will continue to be utilised in part; however, a new point of access will need to be established direct from Metung Road to the west. The location of this access point was nominated to ensure there are sufficient sight lines and to prevent vegetation loss. Conditions imposed by the Department of Transport include the requirement to remove and re-fence the existing access and reinstate the road reserve to the satisfaction of the Department.

The application also seeks approval for the use of land and buildings and works for a dwelling and associated outbuilding on proposed Lot 1. The use of the land is triggered by the zone provisions as the lot would be less than one hectare (1ha), the scheduled minimum size.

The proposed dwelling will be approximately 190.5m² in area and will be single storey comprising three bedrooms, open plan kitchen and living areas. It will consist of a Colorbond roof and cladding which will be monumnet in colour and select face brick work and verandah areas are proposed to soften the visual appearance in nearest proximity to the road.

The landform within proximity to the dwelling and outbuilding will be manipulated to provide a flat building pad with suitable batters as shown on the accompanying plan set. Further earthworks will also be undertaken to decommission the existing dam located within Lot 1 to negate any safety concern.

The subject land is not currently located within the sewer district and it is therefore expected that the proposed dwelling on Lot 1 and future development on Lot 2 will each cater for wastewater via on site. A Land Capability Assessment Report prepared by Land Capability Assessments - Gippsland has been provided in support of the application to demonstrate the ability of each lot to accommodate sufficient onsite wastewater disposal.

Notice of the proposal

Original instructions for notification of the proposal were distributed to the applicant on 3 April 2020 and included requirements to give notice via letters to nominated owners and occupiers of land in proximity to the subject site, as determined by the officer.

A neighbour contacted the planning department on 12 June 2020 having been made aware of the proposal and expressing concern that she had not been given direct notice of the proposal. The officer identified he had made an error in the notice instructions. As there was a genuine intent to include the property in the instructions, a request for notice to be provided to the neighbour was sent to the applicant on the same date.

The notice had otherwise been directed to all owners and occupiers of land:

- sharing a boundary with 705 Metung Road; and
- immediately opposite the road boundary of 705 Metung Road, where there was no other intervening land.

The neighbour lodged an objection and also provided a petition claiming that several other neighbours did not receive the direct notices. The applicant had provided a Statutory Declaration stating that they had carried out the notification instructions as required.

The late objection by George Neophytou Law raises concerns about the advertising process undertaken by Council generally, and reinforces concerns raised by other objectors. Notice of applications process and procedure is actively being reviewed, alongside other department policy and procedure. Officers are confident that the community has had access to the information and relevant parties have submitted objections which are being considered.

Current Status/Issues

Following the initial complaint and subsequent objection, the principal objector has had several discussions with the applicant and officers regarding her concerns and has made several submissions as outlined in **Attachment 3**.

Ten objectors have formally been recognised, however they are supported by an additional thirteen names of people who have signed a petition. The petition is counted as a single objection pursuant to Section 57 (3) and (4) of the Act.

A planning consultation meeting was held on Monday 8 November 2021. Minutes of this meeting are at **Attachment 5**. Responses to objections are contained within **Attachment 6** and also under **Engagement**.

Legislation

The implications of this report have been assessed and are not considered likely to breach or infringe upon the human rights detailed in the Victorian Government's Charter of *Human Rights and Responsibilities Act 2006*.

Planning and Environment Act 1987

Two Section 173 Legal Agreements are registered on the title. Section 126 of the Act provides that any person who uses or develops land in contravention of or fails to comply with a planning scheme, or a permit, or an agreement under section 173 is guilty of an offence. The latter requirement is proposed to be addressed through conditions of approval that modify the Section 173 Agreements.

The Agreements provide:

Agreement	Land Affected	Obligation of the owner
AQ805832E 08/03/2018	Subject Land means the land situated at 705 Metung Road, Metung being the land referred to in certificate of title Volume 10238 Folio 341 and any reference to the Subject Land includes any Lot created by the subdivision of the Subject Land or any part of it. Lots 1, 2 and 3 on PS802735E Current 639, 647 and 705 Metung Road	Waterway Management Plan The Owner covenants and agrees that: the Waterway Management Plan applies to Lot 1 and Lot 2 created by the subdivision of the Subject Land; and the Owner of Lot 1 and Lot 2 must at all times implement and comply with all provisions, requirements and recommendations of the Waterway Management Plan: (a) at the full cost of the Owner; and (b) to the satisfaction of Council and East Gippsland Catchment Management Authority.
AL983190P 25/06/2015	Subject land means part of the land situated at 705A Metung Road Metung being part of the land referred to in certificate of title volume 11191 folio 054 and more particularly being Lot 3 on the Endorsed Plan and any reference to the Subject Land includes any Lot created by the subdivision of the Subject Land or any part of it.	6. Owner's specific obligations 6.1 Further subdivision Notwithstanding anything in the Planning Scheme, the Owner must not subdivide the Subject Land into more than 3 Lots.

A request to end the AL983190P will need to be made and considered separately by Council if the permit is issued as recommended.

East Gippsland Planning Scheme

Planning policy relating to the proposal generally seeks to:

- Direct development to appropriately zoned and serviced land;
- Protect residential amenity;
- Respect neighbourhood character;
- Protect environmental features of significance; and
- Ensure that human life and property is not placed at an unacceptable level of risk.

The key aspect of decision making in relation to this matter will be to ensure that the application has appropriately addressed all the purposes and objectives of the Zone, Overlays and Particular Provisions relating to the subject site and immediate surrounds. The policy, standards, and decision guidelines are summarised below to inform Council of the scope of considerations in the detailed Planning Scheme assessment.

Planning Scheme Controls and decision criteria

The following is a summary of the controls applicable to the assessment. Further detail of the considerations for each control is at **Attachment 6**.

Scheme Part	Detail	Relevance
Zones	Rural Living Zone 2	Relevant zone. Permit required for subdivision and use of land for and buildings and works for a dwelling on proposed Lot 1.
	Low Density Residential Zone	Not affecting the proposal Provisions of the scheme apply where land affected by multiple zones is subdivided. The balance must be the minimum lot size for each lot, which is met.
Overlays	Bushfire Management Overlay	Affects subdivided land Permit required for subdivision, buildings and works
	Vegetation Protection Overlay 3	Affects the entire site. There is no proposed vegetation removal
	Significant Landscape Overlay Schedule 3	Affects the entire site Permit is required for buildings and works.
	Erosion Management Overlay	Affects the entire site Permit is required for subdivision and earthworks for the new dwelling and to decommission the dam.
	Design and Development Overlay Schedule 11	Only mapped to a portion of the LDRZ land behind property in Rosherville Road
	Environmental Significance Overlay 1-63	Does not affect the subdivided land but affects another portion of the balance lot. Permit required for Subdivision
	Land Subject to Inundation Overlay	Affects about 880 square metres of the balance of the lot at the south-eastern corner of the lot. Permit is required for subdivision
Particular Provisions	Clause 52.02 – Easements, Restrictions and Reserves	A permit is required for creation of a carriageway reserve
	Clause 52.29 - Land Adjacent to a Road Zone, Category 1	A permit is required to subdivide land adjacent to the road zone, Category 1 and create new access

Collaborative Procurement

Not applicable

Council Plan

This report has been prepared and aligned with the following strategic objectives set out in the Council Plan 2021-2025:

Strategic Objective 2: 2.1 Statutory and strategic planning for land use delivers sustainable outcomes that balance the need for growth with the enhancement of our lifestyle, character, the built and natural environment.

Council Policy

In accordance with Council's Planning Permit Application Delegations Policy 2018, the matter was called in by Councillors for determination and was subject to a Planning Consultation Meeting and referral to Council for consideration and determination.

Options

At the advance request of Councillors an alternative motion for refusal or to alter proposed permit conditions may be prepared by Officers.

Resourcing

Financial

There are no anticipated financial requirements.

Plant and equipment

There is no use of plant and equipment required.

Human Resources

Assessment has been undertaken by Council officers.

Risk

The risks of this proposal have been considered and there are relatively low risks associated with the recommendation.

Economic

The proposal creates two lots for dwelling development in an infill to the existing settlement.

Social

The proposal did not necessitate preparation of a Social Impact Assessment or comment in accordance with the planning scheme. The proposal is a moderate increase to density in the established settlement and will not unduly burden the social support systems for Metung.

Gender Impact Statement

Considerations of Gender Equality in Planning are made in relation to planning strategy, including planning scheme amendments and policy changes. Individual assessment of planning applications tend to be gender neutral, however Council officers consider factors such as community safety, privacy, and accessibility in an integrated and multi-faceted decision-making process.

Relevant considerations for this application have been made in relation to perceptions of safety and privacy expressed by objectors in relation to light spill. This is outlined further at **Attachment 6**.

Environmental

Considerations are given to environmental impacts through the planning scheme assessment at **Attachment 6**.

Climate change

This report has been prepared and aligned with the following Climate Change function/category:

Land Use Planning: Consideration is given to climate change in the local land use planning and includes responses to direct and indirect impacts.

Consultation

Consultation has been undertaken in the following manner:

Referrals	Country Fire Authority (CFA) – S55 Recommending Referral – Conditional consent given
	East Gippsland Water – S55 Determining referral - Conditional consent given
	AusNet (Electricity) – S55 Determining - Conditional consent given
	APA Group (Gas) – S55 Determining - Consent given
	East Gippsland Catchment Management Authority – S55 Recommending Referral – Referral outstanding (identified during PCM reporting) - S52 Notice for waterways – consent with conditions. The conditions are not being implemented as written, as such the referral is considered an objection.
	DELWP – S52 for subdivision in the ESO – consent with no conditions.
Internal	Technical Officer Development (Drainage, Internal Access, Erosion) - Conditional consent given
Notification	Notification of the proposal was undertaken in accordance with section 52 of the <i>Planning and Environment Act 1987</i> .
	The permit applicant was required to send letters to adjoining and surrounding neighbours.
	No sign on site was requested by the officer.
Objections	Ten (10) plus EGCMA

Objections

A copy of the objections can be viewed at **Attachment 3**. The objections have been formatted into a single table for legibility and to reduce file sizes.

The summarised grounds of objection are listed below with officer comments.

Process of notification

Officers have identified shortcomings in the notice required for the proposal, but this has been rectified through the issue of amended notice instructions and the general awareness of the proposal, especially from the objectors' statements. Officers do not have reason to doubt the validity of the declaration made by the applicants with respect to the giving of notice in the prescribed form.

Traffic volume and safety

The assessment by Department of Transport and the Council's Technical Officer indicate that there is a high degree of safety in the existing road conditions, and by virtue of an anticipated additional 20 vehicle movements per day based on standard criteria. Offsite developments are likely to contribute more significantly. There are significantly more vehicle movements generated along the southern side of the road, including from the objectors' properties.

Biodiversity/Environmental issues

Each lot is to be retained at over 0.4 hectares, so no consideration is required to be given to the loss of native vegetation, and subsequently habitat for native fauna. Any vegetation removal required to facilitate the future development of the land would be subject to permits at that time.

The farm dam to be removed could be done without a planning permit as the dam is relatively shallow. The scope of the required works would be to remove the downstream earthen berm, as there are no walls constructed to create the dam. A works in waterway permit may be required from East Gippsland Catchment Management Authority. The waterway management plan as recommended will assist in the management of erosion from the altered landscape.

There is likely sufficient habitat in the nearby land described generally as a rainforest to accommodate the fauna species which may be displaced.

The land sizes are sufficient and there is sufficient separation from the environmentally significant features of the property to prevent direct impact. Building and engineering standards regulate the prevention of offsite impact. Additional controls could be imposed such as a construction/environmental management plan for the buildings and works components.

No standing trees are proposed to be removed to facilitate the subdivision and development.

Character and rural amenity of the property/entry to Metung

Under the Significant Landscape Overlay, the buildings and works for a dwelling are relevant considerations of this amenity and character concern. Materials and colour schemes, as well as siting and scale of the proposed buildings and works are all relevant considerations and must be assessed on their merits. The SLO does not include a permit trigger for subdivision like its companion overlay the Design and Development Overlay.

Suitability of the determination contrary to the Legal Agreement

Officers have considered discussions with the applicant through the course of the assessment of the application, which are not documented, but which are consistent with the plan demonstrated in the application materials advertised to the public (last page of **Attachment 2**). Officer assessment is that there is entitlement remaining despite the wording of the Agreement, when considering the original size and number of allotments which have historically been involved in the series of subdivisions.

Further discussion is made within **Attachment 6**.

EGCMA referral response

A late referral of the application was made to East Gippsland Catchment Management Authority pursuant to the mandatory requirements for referral of the LSIO and under Section 52 (Notice pursuant to the Act) in relation to the waterways which affect the site. The response (within **Attachment 5**) provides for conditional consent, so long as the conditions recommended are imposed.

Officers do not believe the conditions are wholly appropriate, and as such have modified the wording for inclusion in the permit. This makes the EGCMA an objector to the application if the determination is made per the officer recommendation, and they will have the right to seek review of the determination at VCAT.

The difference of opinion is in the conditions which require the watercourse to be contained within Lot 1. Lot 2 relies on the area including the waterway to provide appropriate defensible space under one ownership. Changes to the lot layout may require additional construction standards for a future dwelling on Lot 2. Additionally, the enlargement of Lot 1 would alter the proposed carriageway alignment and have further impacts on the traffic safety measures as designed.

Further, officers have considered the wording of the previous permit for subdivision which contained a similar requirement for a waterway management plan, and there was no specific requirement for 30 metres both sides of the waterway to be revegetated. The proposed condition removes the distance as a hard buffer, and as such provides for a negotiated outcome between all parties.

Attachments

1. Proposed Permit Conditions [**5.3.2.1** - 7 pages]
2. Application Documentation [**5.3.2.2** - 1 page]
3. Objections [**5.3.2.3** - 6 pages]
4. Minutes of the PCM 8 November 2021 [**5.3.2.4** - 4 pages]
5. Referral Authority Responses [**5.3.2.5** - 16 pages]
6. Detailed planning scheme considerations [**5.3.2.6** - 23 pages]

Proposed Permit Conditions

CONDITIONS

1. The subdivision submitted for certification must be generally in accordance with the endorsed plan and must not otherwise be altered without the prior written consent of the Responsible Authority.
2. The use and development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
3. Before the issue of statement of compliance, Agreement AL983190P must be ended on the current Lot 3 Volume 12011 Folio 896 to the satisfaction of the responsible authority.
4. Before a statement of compliance is issued, the owner must enter into an agreement with the Responsible Authority under section 173 of the Planning and Environment Act 1987 to provide for the following:
 - a) Lot 3 must not be further subdivided until such time as the land is rezoned from Rural Living 3 to Low Density Residential or similar.
 - b) Development of a dwelling on Lots 1 and 2 must include the provision of a minimum 5,000 litre rainwater tank to capture rainwater from the dwelling, which must be used for:
 - a. Toilet flushing, showering or laundry water supply;
 - b. Contribution to static water supply for firefighting purposes; or
 - c. Gardening.

The owner must pay the costs of the preparing, lodging and registering the agreement and any subsequent amendment, removal or other dealing associated with the agreement. The agreement must be registered on the certificate of title for the land.

5. Before the development starts, a landscape plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale. The plans must show:
 - Planting within Lot 1 along Metung Road and the proposed carriageway comprising trees and shrubs to screen the proposed development without impacting on the defensible space for the dwelling.
 - A schedule of all proposed vegetation (trees, shrubs and ground covers) which includes botanical names, common names, mature size and total quantities of each plant.
 - Pot sizes and specific location of the plants to be planted.
 - Buildings, outbuildings and other structural features on the land that influence the landscape design.
 - Natural features that influence the landscape design.
 - Proposed irrigation methods.

Landscaping in accordance with this approved plan and schedule must be completed before the dwelling is occupied.

6. The owner of the land must enter into an agreement with:
 - A telecommunications network or service provider for the provision of telecommunication services to each lot shown on the endorsed plan in accordance with the provider's requirements and relevant legislation at the time; and
 - A suitably qualified person for the provision of fibre ready telecommunication facilities to each lot shown on the endorsed plan in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.
7. Before issue of a Statement of Compliance for any stage of the subdivision under the Subdivision Act 1988, the owner of the land must provide written confirmation from:
 - A telecommunications network or service provider that all lots are connected to or are ready for connection to telecommunications services in accordance with the provider's requirements and relevant legislation at the time; and
 - A suitably qualified person that fibre ready telecommunication facilities have been provided in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.
8. All new services to the subdivision must be placed underground in shared trenching. Design for the installation of services must meet the requirements of the relevant authorities and must be approved by those authorities to the satisfaction of the responsible authority.
9. Before the Issue of Statement of Compliance, each lot as shown on the endorsed plans must be drained to the satisfaction of the Responsible Authority.
10. Before the buildings are occupied, all stormwater runoff from roofed and paved areas must be discharged to a Rubble Pit or Rock Beached outlet designed and installed by a Registered Plumber, to the satisfaction of the Relevant Building Surveyor and be located well away from, or below any sewerage treatment areas.
11. Before the issue of statement of compliance, a 3.5 metre minimum wide, drained, 150 millimetre thickness of appropriately compacted Size 20 millimetre, Class 3 Gravel pavement (as driveway), is to be constructed in the Carriageway Easement, to allow access to both new Lot 1 and Lot 2 from the new access point in Metung Road to the satisfaction of the responsible authority.
12. Before the issue of statement of compliance the redundant section of driveway from the new carriageway to Metung Road through proposed lot 1 and the existing vehicular crossings and associated infrastructure must be removed and the verge and driveway area reinstated and revegetated to the satisfaction of the Responsible Authority, with any necessary works approvals obtained from Department of Transport.
13. All earthworks associated with the development must be stabilised in accordance with standard engineering design and practices against erosion and failure. All earthworks or retaining structures must not encroach across neighbouring property boundaries to the satisfaction of the Responsible Authority.

14. During construction and maintenance activities, adequate steps must be taken to stop soil erosion and the movement of sediment off site and into drainage lines, watercourses and onto adjoining land to the satisfaction of the Responsible Authority. Methods include but are not limited to:
 - a) Control of on-site drainage by intercepting and redirecting run-off in a controlled manner to stabilised vegetated areas on site.
 - b) Installation of sediment control structures such as sediment basins, sediment fences and sediment traps when construction commences and maintaining them until the site is stabilised.
 - c) Re-vegetating all disturbed areas as quickly as possible or within 14 days after construction works are completed.

15. Prior to the commencement of any works associated with the subdivision or Certification of the Plan of Subdivision, a Waterway Management Plan (WMP) applying to proposed Lots 1, Lot 2, and a portion of Lot 3 (in the area of the carriageway must be endorsed in writing by the East Gippsland Catchment Management Authority to the satisfaction of the responsible authority. The WMP must include:
 - a) Details of the existing environmental values;
 - b) Details of any initial stabilisation and vegetation works;
 - c) A landscape plan for revegetation of the waterway, including a species list and proposed density of the plantings. The vegetation must be representative of the Ecological Vegetation Class for the site. Revegetation must not encroach into an area required to be cleared for vegetation to create defensible space; and
 - d) A maintenance plan detailing the sequencing and periods of short, medium and long term actions, including inspections, and the parties responsible for each action.

16. Prior to the issue of a Statement of Compliance for the subdivision, the property owner(s) shall enter into an Agreement with the responsible authority pursuant to Section 173 of the Planning and Environment Act 1987 ('the Act') and make application to the Registrar of Titles to have the Agreement registered on the title to the land under Section 181 of the Act. The owner(s) must pay all reasonable costs of the preparation, execution and registration of the Agreement. The Agreement will stipulate that:
 - a. A Waterway Management Plan applies to Lot 1, Lot 2, and Lot 3 in the Plan of Subdivision; and
 - b. The current and future owner(s) of Lot 1, Lot 2, and Lot 3 in the Plan of Subdivision must comply with all requirements of the Waterway Management Plan at all times.

Mandatory Bushfire Development Condition

17. The bushfire mitigation measures forming part of this permit or shown on the endorsed plans, including those relating to construction standards, defensible space, water supply and access, must be maintained to the satisfaction of the

responsible authority on a continuing basis. This condition continues to have force and effect after the development authorised by this permit has been completed.

Mandatory Bushfire Subdivision Condition

18. Before the statement of compliance is issued under the Subdivision Act 1988 the owner must enter into an agreement with the responsible authority under Section 173 of the Planning and Environment Act 1987. The agreement must:
- State that it has been prepared for the purpose of an exemption from a planning permit under Clause 44.06-2 of the East Gippsland Shire Planning Scheme.
 - Incorporate the plan prepared in accordance with Clause 53.02-4.4 of this planning scheme and approved under this permit.
 - State that if a dwelling is constructed on the land without a planning permit that the bushfire mitigation measures set out in the plan incorporated into the agreement must be implemented and maintained to the satisfaction of the responsible authority on a continuing basis.

The land owner must pay the reasonable costs of the preparation, execution and registration of the Section 173 Agreement.

Time Limit condition

19. This permit will expire if any of the following circumstances applies:
- The development is not started within two years of the issue date of this permit.
 - The development is not completed within four years of the issue date of this permit.
 - The use has not commenced within four years of the issue date of this permit.
 - The plan of subdivision is not certified within two years.
 - A Statement of Compliance is not issued within five years of the date of the plan of subdivision being certified.

In accordance with section 69 of the Planning and Environment Act 1987, an application may be submitted to the Responsible Authority for an extension of the periods referred to in this condition.

Country Fire Authority Conditions

Section 173 Agreement

20. Before the statement of compliance is issued under the Subdivision Act 1988 the owner must enter into an agreement with the Responsible Authority under Section 173 of the Planning and Environment Act 1987. The agreement must:
- Incorporate the Bushfire Management Plans approved under this permit.
 - State that it has been prepared for the purpose to give effect to the bushfire mitigation measures set out in the approved Bushfire Management Plans.
21. The Bushfire Management Plans Crowther & Sadler (lot 1, Plan ref: 18232-BMP-L1, Version 1 – Drawn 10/03/2020 and lot 2, Plan ref: 18232-BMP-L2, Version 2 – Drawn 19/06/2020) must be endorsed to form part of the permit and must not be altered unless otherwise agreed in writing by the CFA and the Responsible Authority. When endorsed the plan must be included as an annexure to the section 173 agreement prepared to give effect to the conditions of this permit.

Matters to be set out in Section 173 Agreement

22. In addition to the requirements of Clause 44.06-5 of the East Gippsland Shire Council Planning Scheme, the section 173 Agreement prepared in accordance with that clause must also specify the following:

- a) Explicitly exclude Lot 3 from the following exemption under Clause 44.06-2 of the East Gippsland Shire Council Planning Scheme:
 - A building or works consistent with an agreement under section 173 of the Act prepared in accordance with a condition of permit issued under the requirements of Clause 44.06-5.

AusNet Electricity Services conditions

23. The plan of subdivision submitted for certification must be referred to AusNet Electricity Services Pty Ltd in accordance with Section 8 of the subdivision Act 1988.

24. The owner of the land must:

- Enter in an agreement with AusNet Electricity Services Pty Ltd for supply of electricity to each lot on the endorsed plan.
- Enter into an agreement with AusNet Electricity Services Pty Ltd for the rearrangement of the existing electricity supply system.
- Enter into an agreement with AusNet Electricity Services Pty Ltd for rearrangement of the points of supply to any existing installations affected by any private electric power line which would cross a boundary created by the subdivision, or by such means as may be agreed by AusNet Electricity Services Pty Ltd.
- Provide easements satisfactory to AusNet Electricity Services Pty Ltd for the purpose of "Power Line" in the favour of "AusNet Electricity Services Pty Ltd" pursuant to Section 88 of the Electricity Industry Act 2000, where easements have not been otherwise provided, for all existing AusNet Electricity Services Pty Ltd electric power lines and for any new power lines required to service the lots on the endorsed plan and/or abutting land.
- Obtain for the use of AusNet Electricity Services Pty Ltd any other easement required to service the lots.
- Adjust the position of any existing AusNet Electricity Services Pty Ltd easement to accord with the position of the electricity line(s) as determined by survey.
- Set aside on the plan of subdivision Reserves for the use of AusNet Electricity Services Pty Ltd for electric substations.
- Provide survey plans for any electric substations required by AusNet Electricity Services Pty Ltd and for associated power lines and cables and executes leases for a period of 30 years, at a nominal rental with a right to extend the lease for a further 30 years. AusNet Electricity Services Pty Ltd requires that such leases are to be noted on the title by way of a caveat or a notification under Section 88 (2) of the Transfer of Land Act prior to the registration of the plan of subdivision.
- Provide to AusNet Electricity Services Pty Ltd a copy of the plan of subdivision submitted for certification that shows any amendments that have been required.
- Agree to provide alternative electricity supply to lot owners and/or each lot until such time as permanent supply is available to the development by AusNet Electricity Services Pty Ltd. Individual generators must be provided

at each supply point. The generator for temporary supply must be installed in such a manner as to comply with the Electricity Safety Act 1998.

- Ensure that all necessary auditing is completed to the satisfaction of AusNet Electricity Services Pty Ltd to allow the new network assets to be safely connected to the distribution network.

Department of Transport conditions

25. Only one point of access to the Metung Road will be permitted. This must be generally within the proposed carriageway easement as shown on Crowther and Sadler Proposed subdivision Plan.
26. The access must be in accordance with Standard rural access SD2066 to the satisfaction of the Department.
27. Any gates must be located a minimum of 10m from the road reserve.
28. The existing access must be removed, refenced and the road reserve re-seeded to the satisfaction of the Department.
29. Prior to certification, a dimensioned plan of the access must be submitted and approved by the Department of Transport. The plan must demonstrate the required sight distance as shown in Austroads Guidelines for Safe intersection Site distance for the posted speed.
30. Prior to the statement of compliance, the access and access removal must be completed at no cost and to the satisfaction of the Department.

Notes

1. Please be informed that you are required to check with a Private Building Surveyor if a Building Permit is required for the building works relating to this planning permit.

Building works on this site must comply with the requirements of the Victorian Building Act and Building Regulations, the National Construction Code (NCC) and relevant Council Local Laws.

2. All wastewater from the proposed development must be disposed of in accordance with the provisions of the Environment Protection Act 1970. A permit to install a septic tank system' is required from the Environmental Health unit of Council.
3. All works within 30 metres of a designated waterway require a Works on Waterways permit from the East Gippsland Catchment Management Authority, issued under the *Water Act 1989*. This includes (but is not limited to) construction of any recreational paths and crossings, construction of any vehicle access over a designated waterway, and installation of any water or sewer main within 30 metres of a designated waterway.

AusNet Electricity Services notes

4. It is recommended that, at an early date the applicant commences negotiations with AusNet Electricity Services Pty Ltd for a supply of electricity in order that supply arrangements can be worked out in detail, so prescribed information can

be issued without delay (the release to the municipality enabling a Statement of Compliance with the conditions to be issued).

Arrangements for the supply will be subject to obtaining the agreement of other Authorities and any landowners affected by routes of the electric power lines required to supply the lots and for any tree clearing.

Prospective purchasers of lots on this plan should contact this office to determine the availability of a supply of electricity. Financial contributions may be required.

East Gippsland Water notes

5. If water services are required for the newly created Lots, each Lot/Unit must be separately connected to the water reticulation system and separately metered, as appropriate, to the satisfaction of East Gippsland Water.

Current water meter (#77756) to remain with the existing dwelling, inside the boundaries of proposed Lot 3.

For application documentation, refer to the advertised copy of the application listed on Council's website:

[111/2020/P - Advertised Application](#)

*Note there was a requirement for amended plans with respect to bushfire that are not included in this version of the documentation. The amended plans were provided to CFA and form the basis of their conditional consent attached to this report.

Objections – 111/2020/P – 705 Metung Road, Metung**Three lot subdivision, creation of access to a road zone, category 1, creation of a carriageway easement, and buildings and works for a dwelling**

N	Objector	Lodged	What are the reasons for objection	How would the objector be affected?
1	Faye Carlin, Metung	10/08/2020	My objection at present concerns the inability of the surveyor and planners Crowther and Sadler to adhere to planning regulations regarding this “concept” Proposed Sub division Plan. Either they choose or are administratively incompetent in following the clearly set out laws. Until this happens and they adhere to the law, it is hard to complete this application especially under covid-19 lockdown rules. Concerns include, Biodiversity issues, Traffic concerns, Changes to the Character of town hence, economic issues for local businesses and Privacy issues that need to be addressed. Also, any communication with the neighbours and town folk have not been addressed even though a request with some of the issues was put forward to the legally responsible business. Crowther & Sadler, and in particular Michael Sadler will not discuss any issues with anyone involved.	Not sure as no issues have been discussed. First and foremost environmental damage, economic damage to town, and the loss of an iconic vista to Metung!! Due to (covid) restrictions this objection cannot be completed, so more information is to follow once a town meeting has been booked with Michael Sadler. When he responds that is!!!
1	Faye Carlin, Metung	28/08/2020	<p>“This is to advise East Gippsland Shire that I do not approve and object to this planning application. This will change the character of the town and put pressure on the Metung Rainforest”</p> <p>Letter countersigned: Russell Hobson, Metung Steve Bull, Metung Wendy Bull, Metung Tom Cameron, Metung Indira Quin, Lakes Entrance Kaye Hodges, Metung Rose Matthies, Metung Doug Matthies, Metung Sean Eccles, Nungurner Steph Murray, Metung Rene Hay, Metung</p>	<p>“This is to advise East Gippsland Shire, planning, that I did not receive notification from Crowther & Sadler Pty Ltd of the ‘concept’ proposed subdivision P.A. Number 111/2020/P at 705 Metung Rd, Metung, 3904”</p> <p>Countersigned Faye Carlin, Metung Sandra Plain, Metung Damian Anderson, Metung Frank and Eileen Jozwin, Metung</p>

N	Objector	Lodged	What are the reasons for objection	How would the objector be affected?
1	Faye Carlin, Metung	12/03/2021	<p>Not good enough behaviour The only people notified were connected. Eg. Gent, builder, relative, friend of relative! All OK about development for obvious My request for the driveway to be removed may just the the amount of land that makes Lot 1 not big enough for subdivision! Area for subdivision! What is the land size required for subdivision in this zone – does it match up with lot area in lot 1 – if lot 2 boundary is moved is there enough room also?</p>	<p>Additional name to the above: Narelle Dimsay, Metung</p> <p>“This is to advise East Gippsland Shire, planning department, that I did not receive notification from Crowther & Sadler Pty Ltd of the ‘concept’ proposed subdivision P.A. Number 111/2020/P at 705 Metung Rd, Metung, 3904”</p> <p>Countersigned: Kenneth and Shirley Holden, Metung K. Thompson, Metung D. Warren, Metung R. Colarossi, Metung D. Paul, Metung</p>
1	Faye Carlin, Metung	12/03/2021	<p>Petition as listed above dated 28/08/2020, no changes to signatures</p> <p>Consideration needs to be taken towards the distinctive characteristics of regional towns when planning for future development</p> <p>It should help to protect the health of ecological systems and the biodiversity they support. Under East Gippsland Planning Scheme it say “To identify areas with environmental and landscape values and conserve them” There is an Intergovernmental Agreement on the Environment, it sets out key principles for environmental policy in Australia Planning should protect restore and enhance sites and features of native conservation, biodiversity, geological or landscape value</p>	
2	Belinda Miles, Metung	12/03/2021	<p>Too close to forest Traffic concerns</p>	Traffic, totally inappropriate subdivision
3	Krissy Thompson, Metung	12/03/2021	<p>1) Environmental Impact – a unique rainforest habitat will be impacted with this subdivision</p>	<p>1) Possible road safety issues 2) Impact he visual amenity of the area</p>

N	Objector	Lodged	What are the reasons for objection	How would the objector be affected?
			2) Significant loss of trees 3) Road safety issues with an increase in traffic into Metung 4) Impact the visual amenity of the area	3) Possible loss of privacy 4) Impacts the natural vista
4	Deborah Warren, Metung	12/03/2021	I am expressing my disapproval of the proposed subdivision at 705 Metung Rd. This area of unique rainforest is a site significance an an asset to our town. I am concerned development in this area could seriously reduce the quality and ecological function by removing trees, vegetation, etc. and changing the natural watercourse to the area. Hopefully restoration of the microclimate is on the shire agenda, not degeneration of this site.	
5	Narelle Dimsey, Metung	12/03/2021	Subdivision is an area of rainforest Gully home to Native Wildlife	(illegible? – possibly “Native Reason”)
6	Rocco Colarossi, Metung	12/03/2021	Change of character of the area Traffic Congestion Fear of more subdivisions and population explosion of Metung	Increased traffic Fear of more subdivision Peace and quiet will disappear as Metung grows
7	Sandra Plain	12/03/2021	I moved to Metung 6yrs ago and chose where I live because I wasn't surrounded by neighbours. I love my house I do not want any sub-dividing across the road that I have to look at buildings and hear traffic coming and going. I love my treed outlook and watching the cows grazing and the lovely clean smell	I can stand on my decking and look across at a beautiful view with no obstructions and a dam that homes frogs that I listen to at night, and other creatures that take advantage of the forest and water. You take away these things like other countries do and we end up with no more animals only buildings and more traffic. Metung doesn't need this.
8	Damien Anderson, Metung	12/03/2021	<ul style="list-style-type: none"> - Change the character of the Township of Metung - Will have a detrimental impact on adjoining properties along Metung Road - It will have an adverse impact on the native flora and fauna - It will have a negative impact on the operation of Metung Road 	<ul style="list-style-type: none"> - Increased traffic noise and increased risk of an accident - Will remove the natural appeal of Metung - (illegible) relations to biodiversity of the rainforest

N	Objector	Lodged	What are the reasons for objection	How would the objector be affected?
9	Andrew Summerton	8/11/2021	Have not been consulted or informed of proposal. Changing nature of adjacent farm land to residential. Change to character of local surrounds.	Recently moved into area from the city. Reason to move to Metung was to be surrounded by semi-rural farm-land and not built up residential.
10	George Neophytou Law	12/01/2022	<p>The subject land of 28.83ha forms part of a rain forest, naturally forming water courses and small lakes.</p> <p>The Proposal: It appears that after some juggling of the proposed allotment site areas during the planning application process, the applicant has settled with Lot 1 comprising of an area of 1.417ha, Lot 2 with an area of 1.108ha and the balance of land being 28.31 ha forming Lot 3. A carriageway easement encumbering Lot 3 is included with access/egress to Metung Road in order to service the proposed two new allotments.</p> <p>The application also seeks approval for the use and development of a dwelling and outbuilding on the proposed Lot 1.</p> <p>Grounds of Objection: The application triggers numerous provisions within the East Gippsland Planning Scheme, however, this objection only addresses the critical and primary aspects which the East Gippsland Shire Council (Council) should consider in rejecting the application.</p> <p>35.03 Rural living Zone The subject land is clearly zoned Rural Living Zone (RLZ). An insignificant portion of the land is zoned Low Density Residential (LDRZ), but has no bearing on this application as the remaining dominant aggregate of the land is under RLZ.</p>	<p>Conclusion: Under the current Section 173 Agreement (AL983190P, 25th June 2015) the ability to further subdivide has been exhausted. Furthermore, under the RLZ the owner has not satisfied the requirements of Schedule 2 on the allotment sizes, or provided any compelling reasons why Council should exercise its discretion to allow any further subdivision, of two, or even one allotment. There is an abundance of land available in Metung, with approximately 165 lots currently for sale, thus, no need or shortage could be advanced.</p> <p>Further Matter - Breach of Advertising Process We have been instructed that the applicant has failed to properly give notice of the proposed subdivision, in addition, the Statutory Declaration provided might also be defective.</p> <p>This matter should be investigated and the declarant reported.</p> <p>The application highlights an ongoing failure of the advertising processes provided for in the Act. We have corresponded with Council previously on the adoption of a better planning notice system where Council not only sends all Planning Notices directly to interested parties, but sends them to a wider group of parties.</p> <p>At the Victorian Civil and Administrative Tribunal hearing on 22nd January 2016 (P1316/2015), Member Katherine Paterson stated she was not aware of any other Council that had adopted East Gippsland Shire Council's notice procedures (where</p>

N	Objector	Lodged	What are the reasons for objection	How would the objector be affected?
			<p>The land has been the subject of many prior subdivisions, attaching consequences and limitations with two Section 173 Agreements, pursuant to the Planning and Environment Act 1987 (the Act) continuing in force. These are the summary details of the recent subdivisions.</p> <p>1. Planning Permit 218/2014/P issued on 22nd December 2014. (Agreement: AL983190P, 25th June 2015).</p> <p>Owners' specific obligation under the Agreement on Further Subdivisions states:</p> <p>Notwithstanding anything in the Planning Scheme, the Owner must not subdivide the Subject Land into more than three (3) Lots.</p> <p>2. Planning Permit 399/2016/P issued on 9th February 2017. (Agreement: AQ805832E, 8th March 2018).</p> <p>Owner covenants the Waterway Management Plan applies to the subdivision.</p> <p>From the documentation it appears the owners have fully exhausted the ability to further subdivide the land following Planning Permit 399/2016/P issued on 9th February 2017.</p> <p>Therefore, the owners do not have a Legal right to any further subdivisions; notwithstanding, Council has the ability to apply its discretion and allow this application.</p> <p>However, 9 given the owners have undertaken numerous previous subdivisions, there does not appear to be any compelling grounds.</p>	<p>the Applicant sends notices and provides photocopies of envelopes and swears a Statutory Declaration, without providing any independent proof of dispatch). Member Paterson accepted undertakings by two Council Officers at the hearing that the process is under review, and she also included additional remarks in the Consent Order that it would be beneficial for Council to review its procedures.</p>

N	Objector	Lodged	What are the reasons for objection	How would the objector be affected?
			<p>The strategic solution could have been to seek rezoning first, to a LDRZ, which is identified in the East Gippsland Planning Scheme, Strategies for Sub-Regions, Towns and Localities (Metung Strategy Plan), however, after full investigation Council may decide this land with its rainforest component at the gateway of Metung Village is an important local landmark site that should remain in its current form.</p> <p>Furthermore, if the owner was able to undertake further subdivisions the provisions of RLZ, Schedule 2, specify a minimum allotment size of 4ha, that would be difficult to achieve, excising two 4ha allotments from the current holding of 28.83 ha would render the remaining allotment unviable.</p> <p>12.01 Protection of biodiversity & 44.01 Erosion Management Overlay</p> <p>As stated earlier, this property with its rainforest component at the gateway of Metung Village is an important local landmark site. The proposal to remove the natural lake (incorrectly described as a dam in the application) with its unique fauna and flora, is a key habitat for rare and threatened species, therefore, requires further transparent investigation by the applicant.</p>	



**EAST GIPPSLAND SHIRE COUNCIL
PLANNING CONSULTATION MEETING
Planning Permit application 111/2020/P
705 Metung Road, Metung
Three lot subdivision**

**Meeting Minutes
Monday, 8 November 2021**

(VIA TEAMS)

COMMENCING AT 6:00 PM

1. Procedural

1.1 APOLOGIES

Councillors

Officers

1.2 IN ATTENDANCE

Councillors

- Cr Mark Reeves, Mayor (Chair – via Teams)
- Cr Trevor Stow (via Teams)
- Cr Arthur Allen, Deputy Mayor (via Teams)
- Cr Mendy Urie (via Teams)
- Cr John White (via Teams)
- Cr Jane Greacen (via Teams)

Applicant

Richard Hoxley, Crowther & Sadler Pty Ltd

East Gippsland Shire Council Minutes Planning Consultation Meeting – 8 November 2021

Objectors

The following is a list of Objectors who registered as attending:

- Andrew Summerton
- Faye Carlin
- Sandra Plain

Officers

- Anthony Basford, Chief Executive Officer
- Sam McPherson, Acting General Manager Place and Community
- Robert Pringle, Statutory Planning Coordinator
- Martin Richardson, Manager Planning

1.3 WELCOME AND INTRODUCTION BY MAYOR, CR MARK REEVES

1.4 DECLARATIONS OF CONFLICT OF INTERESTS

Nil

2. Reports/Presentations

2.1 PLANNER'S REPORT

Robert Pringle, Statutory Planning Coordinator presented the application overview.

Q: Cr Trevor Stow: Requested clarification of biodiversity and the gully.

A: Robert Pringle: Remnant vegetation does exist and there are efforts to preserve this. The boundaries of the proposed lots are not within the areas of concern however objectors have raised concerns about impacts.

Q: Cr Mendy Urie clarification of size of lots.

A: Answer to be provided in applicant's response.

Q: Cr John White: Error in description in item A page 7, typo error "full" not "fun".

A: Robert Pringle: Copy and paste error, legal agreements on title will be correct.

Q: Cr John White: Lack of sewerage, do lot sizes need to be larger than these, is less than 1000 sqm large enough for on-site sewerage?

A: Robert Pringle: Minimum lot size is 4000 sqm for on-site sewerage, 2000 sqm metre for reticulated sewerage. In the Rural Living Zone 1 hectare is required. The land capability assessment indicates that the lots are capable of accommodating on-site wastewater disposal.

Q: Cr Mark Reeves: Are we satisfied that notification requirements have been met?

A: Robert Pringle: Satisfied applicant has carried out the necessary advertising and notified those that could be impacted with adequate time for neighbours to provide comments.

2.2 APPLICANT PRESENTATION

The applicant was represented by Richard Hoxley of Crowther & Sadler.

The applicant addressed zone controls and lot sizes. Noted that this subdivision will see the end of subdivision under current planning controls. Under the Local Planning

Policy Framework, the site is identified as potentially suitable for rezoning to Low Density residential.

Comments on traffic – DoT has raised no concerns. Headlight spill would be shielded by an embankment. Applicant's position is that the access is safe.

The proposed lots have no impact on native vegetation or bushfire risk. Not all of the vegetation is deemed as rainforest.

Visual amenity – this is not farmland; it is on the fringe of a town and is essentially a residential zone. Buildings can be expected in the landscape. Nearby land is in the General Residential Zone.

No expectation of excessive noise.

This is an appropriate proposal in the locality.

Q: Cr Mendy Urie: Seeking clarification of lot sizes and requirements for dwellings.

A: Richard Hoxley: Planning permit will be required on lot 2 regardless, at very least BMO, trigger is for the use of a dwelling, appropriate to provide details of future dwelling, not predetermined. Other comments on dwelling approval requirements.

Lot 2 slightly different, use becomes as a right, provisions of BMO provide an exemption, other overlays can still trigger a permit, e.g. erosion management overlays.

Q: Cr Mendy Urie: Clarification, why are we not looking at dwelling on lot 2?

A: Richard Hoxley: Prospective purchaser of lot 1 knows what they want to build, lot 2, the community will get chance to see this application.

Q: Cr: Jane Greacen: Concerned about subdivision adjacent to towns that do not have access to wastewater, is it correct there is no access to reticulated sewage?

A: Richard Hoxley: Service is in close proximity so could be accommodated.

A: Martin Richardson advised that the Planning team have been involved in discussion with East Gippsland Water regarding their plans for extension of reticulated sewerage services, there has been identified areas likely to need extended sewerage systems.

Q: Cr Jane Greacen: Possible future subdivision of the rest of 23 hectares, is it likely to be subjected to subdivision?

A: Richard Hoxley: Subject to Council undertaking strategic planning, this is possible.

Q: Cr Jane Greacen: Rainforest that is protected, any consideration to protect this land

A: Richard Hoxley: Opportunities for agencies such as Trust for Nature to investigate, cannot foresee how that part of property will be impacted into the future. Cannot presume if and when this will happen.

2.3 OBJECTOR PRESENTATIONS

Faye Carlin

- Raised questions. Cr Reeves suggested that there is an opportunity to make a submission.
- Ms Carlin queried the size of the blocks. Robert Pringle clarified the application and the plans in relation to lot sizes. Cr Reeves requested that Ms Carlin express her concerns.

- Michael Sadler, his deplorable and abusive behaviour, I want that put on record, I want it put on record, there has been no consultation with any of the neighbours, he has been verbally abusive and unprofessional.
- Would like a copy of the affidavit stating notification of application of the properties, no one received documents. Not one person bordering this proposal has been told.
- There were 36 people who were supposed to be notified and I have only found one.
- Comments on verbal abuse from neighbours.
- Other comments about Michael Sadler. I want them recorded. (Note: the meeting has been recorded).
- Overdevelopment of the town, impact will not be in keeping with the town.
- Will change the atmosphere and character of the area. Visual bulk is unsuitable. It is a high density subdivision.
- Forest – the proposal will change the character. Comments on effluent.

Andrew Summerton

- Spoke about reasons for buying his property.
- Disappointed will change the character of the area.
- Brought their property to not be “high-density” residential, this subdivision will change the character of his property.

Sandra Plain

- Lived in this area for 7 years disappointed to see subdivision
- Frogs endangered
- Development will change the character of the town
- Traffic will increase
- Does not think this should go ahead

Q: Cr Mendy Urie: Light shining into Faye's house, will this be addressed
A: Robert Pringle: Will turn minds to this and discuss with Faye and Crowther and Sadler and seek a satisfactory resolution, will report back to Council.

2.4 FUTURE ACTIONS SUMMARY

Robert Pringle outlined the next steps for the application, Council meeting consideration and notification to community members.

CEO answered Chair's question by stating that this application will be added onto Council meeting agenda as soon as possible, providing all reports are completed.

3. Meeting Closed

The meeting closed at 7.04 PM

Our Reference: 75064336
Your Reference: 111/2020/P

Date: 08 April 2020



EAST GIPPSLAND SHIRE COUNCIL
PO Box 1618
BAIRNSDALE VIC 3875

Locked Bag 14051
Melbourne City Mail Centre
Victoria 8001 Australia
T: 1300 360 795
www.ausnetservices.com.au

Dear Sir/Madam,

PLANNING PERMIT NUMBER: 111/2020/P
APPLICANT: CROWTHER & SADLER
DESCRIPTION OF LAND: 795 METUNG ROAD, METUNG

CONDITIONAL CONSENT TO ISSUE OF PERMIT

AusNet Electricity Services Pty Ltd does not object to the issue of a planning permit in respect of the abovementioned application if the permit is subject to the following conditions:

CONDITIONS REQUIRED BY AUSNET ELECTRICITY SERVICES PTY LTD

The plan of subdivision submitted for certification must be referred to AusNet Electricity Services Pty Ltd in accordance with Section 8 of the subdivision Act 1988.

The applicant must –

- Enter in an agreement with AusNet Electricity Services Pty Ltd for supply of electricity to each lot on the endorsed plan.
- Enter into an agreement with AusNet Electricity Services Pty Ltd for the rearrangement of the existing electricity supply system.
- Enter into an agreement with AusNet Electricity Services Pty Ltd for rearrangement of the points of supply to any existing installations affected by any private electric power line which would cross a boundary created by the subdivision, or by such means as may be agreed by AusNet Electricity Services Pty Ltd.
- Provide easements satisfactory to AusNet Electricity Services Pty Ltd for the purpose of "Power Line" in the favour of "AusNet Electricity Services Pty Ltd" pursuant to Section 88 of the Electricity Industry Act 2000, where easements have not been otherwise provided, for all existing AusNet Electricity Services Pty Ltd electric power lines and for any new power lines required to service the lots on the endorsed plan and/or abutting land.
- Obtain for the use of AusNet Electricity Services Pty Ltd any other easement required to service the lots.
- Adjust the position of any existing AusNet Electricity Services Pty Ltd easement to accord with the position of the electricity line(s) as determined by survey.

- Set aside on the plan of subdivision Reserves for the use of AusNet Electricity Services Pty Ltd for electric substations.
- Provide survey plans for any electric substations required by AusNet Electricity Services Pty Ltd and for associated power lines and cables and executes leases for a period of 30 years, at a nominal rental with a right to extend the lease for a further 30 years. AusNet Electricity Services Pty Ltd requires that such leases are to be noted on the title by way of a caveat or a notification under Section 88 (2) of the Transfer of Land Act prior to the registration of the plan of subdivision.
- Provide to AusNet Electricity Services Pty Ltd a copy of the plan of subdivision submitted for certification that shows any amendments that have been required.
- Agree to provide alternative electricity supply to lot owners and/or each lot until such time as permanent supply is available to the development by AusNet Electricity Services Pty Ltd. Individual generators must be provided at each supply point. The generator for temporary supply must be installed in such a manner as to comply with the Electricity Safety Act 1998.
- Ensure that all necessary auditing is completed to the satisfaction of AusNet Electricity Services Pty Ltd to allow the new network assets to be safely connected to the distribution network.

END OF CONDITIONS

It is recommended that, at an early date the applicant commences negotiations with AusNet Electricity Services Pty Ltd for a supply of electricity in order that supply arrangements can be worked out in detail, so prescribed information can be issued without delay (the release to the municipality enabling a Statement of Compliance with the conditions to be issued).

Arrangements for the supply will be subject to obtaining the agreement of other Authorities and any landowners affected by routes of the electric power lines required to supply the lots and for any tree clearing.

Prospective purchasers of lots on this plan should contact this office to determine the availability of a supply of electricity. Financial contributions may be required.

For all enquiries please email subdivisions@ausnetservices.com.au

Yours sincerely,

Daryl Kelly
Customer Projects
AusNet Services



133 Macleod Street, PO Box 52, Bairnsdale Victoria 3875
Tel: (03) 5150 4444 **Fax:** (03) 5150 4477
Email: egw@egwater.vic.gov.au **Web:** www.egwater.vic.gov.au

Our Ref: DOC/20/21200

27 April 2020

East Gippsland Shire Council
(planning@egipps.vic.gov.au)

Attention: Robert Pringle,

EGSC REFERENCE NUMBER(S): 111/2020/P
FOR: SUBDIVISION OF LAND INTO 2 LOTS
LOCATION: 705 METUNG ROAD METUNG (LOT 3 PS802735)
APPLICANT: CROWTHER & SADLER PTY LTD

In response to your letter of 2 April 2020, regarding the above planning application, East Gippsland Water does not have any requirements at this location as the property is already serviced for water. Wastewater services are not available.

Notes:

- (A) If water services are required for the newly created Lots, each Lot/Unit must be separately connected to the water reticulation system and separately metered, as appropriate, to the satisfaction of East Gippsland Water.
- (B) Current water meter (#77756) to remain with the existing dwelling, inside the boundaries of proposed Lot 3.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Carol Ross".

CAROL ROSS
EXECUTIVE MANAGER CUSTOMERS

Cc: Crowther & Sadler Pty Ltd 152 Macleod St Bairnsdale 3875 (contact@crowthersadler.com.au)



Patron: Her Excellency the Honourable Linda Dessau AC, Governor of Victoria



CFA Fire Safety
Fire Prevention & Preparedness
 Email: firesafetyreferrals@cfa.vic.gov.au
 Telephone: 03 9262 8578

Our Ref: 11000-69198-100974
 Council Ref: 111/2020/P

20 July 2020

Robert Pringle
 East Gippsland Shire Council
 273 Main Street
BAIRNSDALE VIC 3875

Dear Robert

CONDITIONAL CONSENT TO THE GRANT OF A PERMIT

Application No: 111/2020/P
Site address: 705 Metung Road Metung
Proposal: Three lot subdivision and development of a dwelling

I refer to correspondence received on 24 June 2020 seeking comments on the above application.

CFA acting as a Referral Authority pursuant to section 55 of the *Planning and Environment Act, 1987 (Act)* has considered and does not object to the grant of a permit for the above proposal subject to –

- Any mandatory conditions specified within the planning scheme; and
- The following conditions being included on any planning permit that may be issued.

– Start of conditions –

Section 173 Agreement

1. Before the statement of compliance is issued under the *Subdivision Act 1988* the owner must enter into an agreement with the Responsible Authority under Section 173 of the *Planning and Environment Act 1987*. The agreement must:
 - Incorporate the Bushfire Management Plans approved under this permit.
 - State that it has been prepared for the purpose to give effect to the bushfire mitigation measures set out in the approved Bushfire Management Plans.
2. The Bushfire Management Plans Crowther & Sadler (lot 1, Plan ref: 18232-BMP-L1, Version 1 – Drawn 10/03/2020 and lot 2, Plan ref: 18232-BMP-L2, Version 2 – Drawn 19/06/2020) must be endorsed to form part of the permit and must not be altered unless otherwise agreed in writing by the CFA and the Responsible Authority. When endorsed the plan must be included as an annexure to the section 173 agreement prepared to give effect to the conditions of this permit.

Protecting lives and property

cfa.vic.gov.au

Matters to be set out in Section 173 Agreement

1. In addition to the requirements of Clause 44.06-5 of the East Gippsland Shire Council Planning Scheme, the section 173 Agreement prepared in accordance with that clause must also specify the following:
 - a) Explicitly exclude Lot 3 from the following exemption under Clause 44.06-2 of the East Gippsland Shire Council Planning Scheme:
 - A building or works consistent with an agreement under section 173 of the Act prepared in accordance with a condition of permit issued under the requirements of Clause 44.06-5.

– End of conditions –

Certification and Statement of Compliance

CFA does NOT consent to the Certification of the Plan of Subdivision under Section 9 of the *Subdivision Act 1988*. CFA does want the Plan of Subdivision for this planning permit application referred under Section 8 of the *Subdivision Act 1988*.

CFA does NOT consent to the Statement of Compliance for Subdivision.

If you wish to discuss this matter in more detail, please do not hesitate to contact Peter Rogasch on 0437 012 114.

Yours sincerely



Justin Meli
Fire Safety Coordinator
COMMUNITY SERVICE DELIVERY

cc: Crowther & Sadler Pty Ltd
contact@crowthersadler.com.au

From: Subdivisions [Subdivisions@apa.com.au]
Sent: Thursday, 21 May 2020 12:25:53 PM
To: Planning Unit Administration; Subdivisions
Subject: RE: 111/2020/P - 705 Metung Road METUNG - Three lot subdivision, creation of access to a road in RDZ1, creation of a carriageway easement and use and development of a dwelling

APA GROUP

APT O&M Services Pty Ltd (APT) is a company under the APA Group.

Our Reference: ps 21052020 -03

Enquires: Paula Soluncevski
Telephone 9463 8323

Dear Sir/Madam,

Re: **APPLICATION FOR PLANNING PERMIT**
 705 METUNG ROAD METUNG
 Plan No. : 802735E (VER 2)

Reference is made to the above correspondence dated 02.04.2020 and accompanying plan.

APT pursuant to Section 56 (1) (b) of the Planning and Environment Act 1987 has no objection to the granting of a permit.

APT does not require the plan to be forwarded under Section 8 of the Subdivision Act 1988, and consents to the issue of a statement of compliance at the appropriate time.

Yours faithfully,

Per
Rebecca May
Planning Manager
Planning & Engineering



Department of Transport

GPO Box 2392
Melbourne, VIC 3001 Australia
Telephone: +61 3 9651 9999
www.transport.vic.gov.au
DX 201292

East Gippsland Shire Council
273 Main Street
Bairnsdale VIC 3875
Attention: Robert Pringle

Dear Sir/Madam

PLANNING APPLICATION NO.: 111/2020/P
DOT REFERENCE NO: PPR 32474/20
PROPERTY ADDRESS: 705 METUNG ROAD, METUNG VIC 3904

Section 55 – No objection subject to conditions

Thank you for your letter dated 2 April 2020 referring details of the above application to the Department of Transport (Head, Transport for Victoria) pursuant to Section 55 of the *Planning and Environment Act 1987*.

The application is for Three lot subdivision, creation of access to a road in RDZ1, creation of a carriageway easement and use and development of a dwelling.

If Council regards the proposed development favourably, the Department would require that the following conditions be included in any Notice of Decision to issue a Planning Permit or Planning Permit:

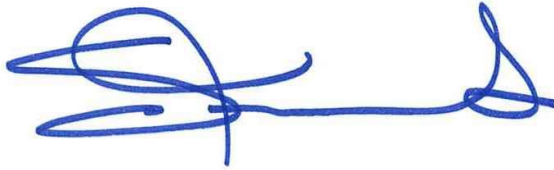
- 1. Only one point of access to the Metung Road will be permitted. This must be generally within the proposed carriageway easement as shown on Crowther and Sadler Proposed subdivision Plan.**
- 2. The access must be in accordance with Standard rural access SD2066 to the satisfaction of the Department,**
- 3. Any gates must be located a minimum of 10m from the road reserve.**
- 4. The existing access must be removed, refenced and the road reserve re-seeded to the satisfaction of the Department.**
- 5. Prior to certification, a dimensioned plan of the access must be submitted and approved by the Department of Transport. The plan must demonstrate the required sight distance as shown in Austroads Guidelines for Safe intersection Site distance for the posted speed.**
- 6. Prior to the statement of compliance, the access and access removal must be completed at no cost and to the satisfaction of the Department.**

Once Council makes its decision, please forward a copy of the decision to the Department as required under Section 66 of the *Planning and Environment Act 1987*.



Should you have any enquiries regarding this matter, please contact Stuart Fenech on 5172-2693 or Stuart.Fenech@roads.vic.gov.au.

Yours sincerely

A handwritten signature in blue ink, consisting of a stylized 'S' followed by a horizontal line and a small loop at the end.

Stuart Fenech
SENIOR PLANNING ENGINEER/OFFICER

[Cc Permit Applicant](#)

30/4/2020



Department of Environment,
Land, Water & Planning

71 Hotham Street
Traralgon Victoria 3844
Telephone: +61 3 5172 2111
www.delwp.vic.gov.au

11 January 2022

Robert Pringle
Statutory Planning Co-ordinator
East Gippsland Shire Council
PO Box 1618
BAIRNSDALE VIC 3875
By email: planning@egipps.vic.gov.au

Our ref: SP478871
Your ref: 111/2020/P

Dear Robert

PROPOSAL: THREE LOT SUBDIVISION, NEW ROAD ACCESS, DEVELOPMENT & USE OF A DWELLING
APPLICANT: V & E SMITH, C/- CROWTHER & SADLER
ADDRESS: 705 METUNG ROAD, METUNG
LEGAL DESCRIPTION: LOT 3, PS802735, PARISH OF BUMBERRAH

Thank you for your correspondence of 10 January 2022 pursuant to section 52 of the *Planning and Environment Act 1987* (the Act).

The application seeks to undertake a three lot subdivision, create a new road access and a dwelling.

Under delegation from the Secretary, the Department of Environment, Land, Water and Planning (DELWP) is providing advice in response to notice of a planning permit application which may affect its responsibilities or assets. The referral trigger is section 52(1)(c) of the Act being Clause 42.01, Schedule 1 - 63 of the Environmental Significance Overlay in the East Gippsland Planning Scheme.

DELWP **does not object** to the granting of a planning permit.

In accordance with section 66 of the *Planning and Environment Act 1987*, please provide a copy of the permit to the above address.

If you have any queries, or require clarification please contact gippsland.planning@delwp.vic.gov.au.

Yours sincerely

Elaine J Wood
Program Manager Planning & Approvals
Central | East Hub (Gippsland Region)

Privacy Statement

Any personal information about you or a third party in your correspondence will be protected under the provisions of the Privacy and Data Protection Act 2014. It will only be used or disclosed to appropriate Ministerial, Statutory Authority, or departmental staff in regard to the purpose for which it was provided, unless required or authorised by law. Enquiries about access to information about you held by the Department should be directed to foi.unit@delwp.vic.gov.au or FOI Unit, Department of Environment, Land, Water and Planning, PO Box 500, East Melbourne, Victoria 8002.



OFFICIAL

EAST GIPPSLAND
CATCHMENT
MANAGEMENT
AUTHORITY



574 Main Street
(PO Box 1012)
Bairnsdale Vic 3875
PHONE: (03) 5152 0600
FAX: (03) 5150 3555
EMAIL: egcma@egcma.com.au
ABN 72 411 984 201

EGCMA Ref: EGCMA-F-2022-00006
Document No: 1
Date: 17 January 2022

OFFICIAL

Robert Pringle
Land Use Planning Officer
East Gippsland Shire Council

Dear Robert,

Planning Permit Application No.: 111/2020/P

Property Street: 705 Metung Road, Metung Vic 3904
Cadastral: Lot 3 PS802735, Parish of Bumberrah

Applicant(s): Ted & Vicki Smith C/- Crowther & Sadler Pty Ltd

I refer to your correspondence received at the East Gippsland Catchment Management Authority ('the Authority') on 13 January 2022 in accordance with the provisions of Section 52 of the *Planning and Environment Act 1987*. The Authority notes that the application is for a three (3) lot subdivision, creation of access to a road in RDZ1, creation of a carriageway easement and use and development of a dwelling.

The 1% Annual Exceedance Probability (AEP³) flood level (commonly known as the 1 in 100 year flood) under current climatic conditions is 2.1 metres AHD⁴. Under future climatic conditions this level increases to 2.9 metres AHD. **The applicable 1% AEP flood level for this property is 2.1 metres AHD.**

The Authority **does not object** to the issue of a Planning Permit, subject to the following conditions being included in the permit:

1. Prior to certification of the Plan of Subdivision, amended plans must be submitted to the satisfaction of the East Gippsland Catchment Management Authority which show the designated waterway wholly contained within the boundaries of Lot 1.
2. Prior to the commencement of any works related to the subdivision a Waterway Management Plan (WMP) must be endorsed in writing by East Gippsland Catchment Management Authority. The WMP must include:
 - a. Details of existing environmental values.
 - b. Details of any initial stabilisation and vegetation works.
 - c. A landscape plan for revegetation of land within a 30 metre buffer either side of the waterway, including a species list and proposed density of the plantings. The revegetation must be representative of the Ecological Vegetation Class for the site. Revegetation within the buffer must not encroach into an area required to be cleared of vegetation to create defensible space.
 - d. A maintenance plan detailing the sequencing and periods of short, medium and long term actions, including inspections, and the parties responsible for each action.

ABN 88 062 514 481

Correspondence PO Box 1374, Traralgon VIC 3844

Telephone 1300 094 262 | Facsimile (03) 5175 7899 | Email westgippy@wgcm.vic.gov.au | Website www.wgcm.vic.gov.au

Traralgon Office 16 Hotham Street, Traralgon VIC 3844 | Leongatha Office Corner Young & Bair Streets, Leongatha VIC 3953

3. Prior to the issue of a Statement of Compliance for the subdivision, the owner(s) shall enter into an Agreement with the responsible authority pursuant to Section 173 of the *Planning and Environment Act 1987* ('the Act') and make application to the Registrar of Titles to have the Agreement registered on the title to the land under Section 181 of the Act. The owner(s) must pay all reasonable costs of the preparation, execution and registration of the Agreement. The Agreement will stipulate that:
 - a. A Waterway Management Plan to the satisfaction of East Gippsland Catchment Management Authority applies to Lot 1 in Plan of Subdivision .
 - b. The current and future owner(s) of Lot 1 must comply with all requirements of the Waterway Management Plan at all times.

The Authority requests that the following note be placed on the permit:

All works within 30 metres of a designated waterway require a Works on Waterways permit from the East Gippsland Catchment Management Authority, issued under the *Water Act 1989*. This includes (but is not limited to) construction of any recreational paths and crossings, construction of any vehicle access over a designated waterway, and installation of any water or sewer main within 30 metres of a designated waterway.

Please ensure that you provide the Authority a copy of your decision in a timely manner to allow for an application for review to VCAT if required.

The Authority **objects** to the issue of the Planning Permit if these conditions are not included.

The attached **explanatory report** provides further detail regarding the Authority's assessment.

Should you have any queries, please do not hesitate to contact Ben Proctor on 1300 094 262 or email planning@wgcm.vic.gov.au. To assist the Authority in handling any enquiries please quote **EGCMA-F-2022-00006** in your correspondence with us.

Yours sincerely,

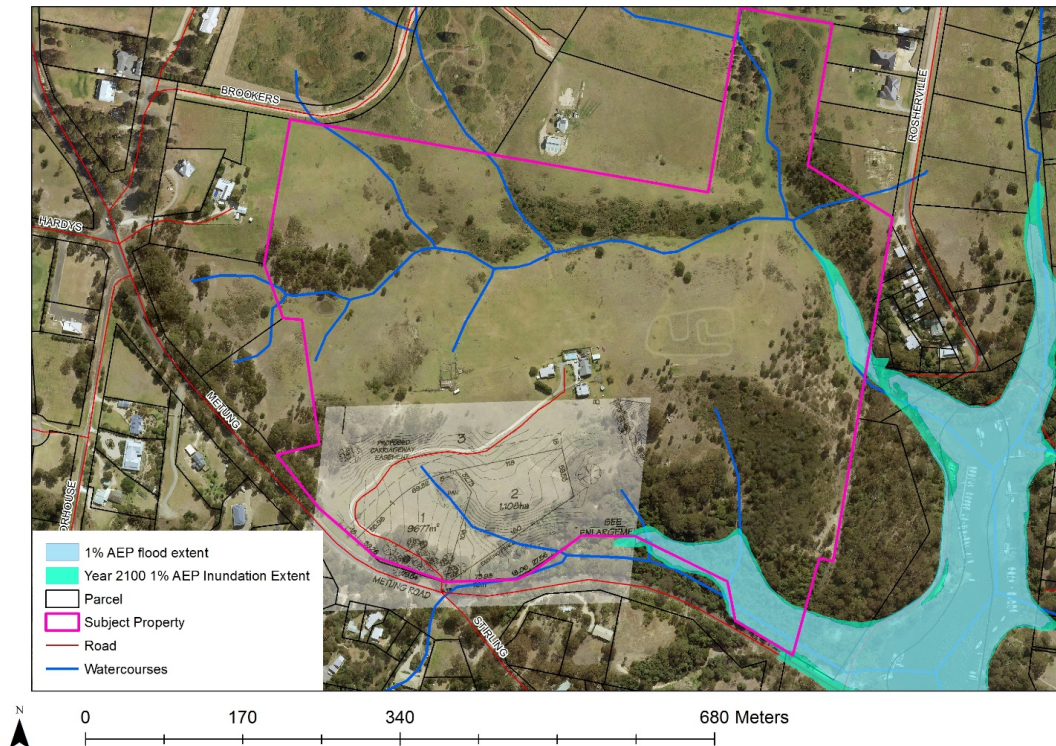


Adam Dunn
Gippsland Floodplain Officer

Cc: Ted & Vicki Smith C/- Crowther & Sadler Pty Ltd (contact@crowthersadler.com.au)

The information contained in this correspondence is subject to the disclaimers and definitions attached.

EXPLANATORY REPORT

Figure 1 – Designated waterways and 1% AEP flood extent**Decision Guidelines**

The East Gippsland Catchment Management Authority assesses all applications against the following National, State and Local Policies, Guidelines and Practice Notes:

1. [Technical Flood Risk Management Guideline: Flood Hazard](#) (Australian Emergency Management Institute, 2014)
2. [Victorian Floodplain Management Strategy](#) (Victoria State Government, 2016)
3. Council Planning Schemes ([Planning Schemes Online](#)), including the:
 - i. Planning Policy Framework
 - ii. Local Planning Policy Framework
 - iii. Relevant Zones and Overlays
4. [Guidelines for Coastal Catchment Management Authorities: Assessing development in relation to sea level rise](#) (DSE, 2012)
5. [Applying for a Planning Permit under the Flood Provisions – A Guide for Councils, Referral Authorities and Applicants](#) (DELWP, 2015)
6. [East Gippsland Waterway Strategy](#) (2014-2022)
7. [East Gippsland Regional Catchment Strategy](#) (2013-2019)
8. [East Gippsland Floodplain Management Strategy](#) (2018-2027)

Table 1 – Flood Data

	Current conditions	2100 conditions
1% AEP flood level – property	2.1 m AHD	2.9 m AHD
Lowest land elevation – property	0.5 m AHD	
Highest land elevation – property	43.5 m AHD	
FLOOD DEPTH		
Minimum depth of flooding on property	0.0 m	0.0 m
Maximum depth of flooding on property	1.6 m	2.4 m
Percentage of property flooded	4 %	5 %
Maximum flood depth on road (evacuation route)	0.0 m	0.0m
FLOOD VELOCITY		
Maximum flow velocity for the purposes of the Building Code of Australia (Construction of Buildings in Flood Hazard Areas)	Unknown	Unknown
HAZARD ASSESSMENT		
Hazard category – development site	Low	Low
Hazard category – road	Low	Low

1% AEP³ Flood Level Determination

Floods are classified by the frequency at which they are likely to occur. In Victoria, all proposals for development on floodplains are assessed against a flood that, on average, will occur once every 100 years. A flood of this size has a 1% chance of occurring in any given year, and is known as either the 100 year Average Recurrence Interval (ARI⁵) flood or the 1% Annual Exceedance Probability (AEP) flood.

Please note that the 1% AEP flood is the minimum standard for planning in Victoria, and is not the largest flood that could occur. There is always a possibility that a flood larger in height and extent than the 1% AEP flood may occur in the future.

Flood levels for the 1% AEP flood event have been declared for this area under the *Water Act 1989*. The declared 1% AEP flood level for this location is 2.1 metres AHD which was obtained from the *Gippsland Lakes Flood Level Modelling Project (2004)*.

Current Victorian Government policy recommends that coastal communities should also be aware of and plan for mean sea level rise of not less than 0.8 metres by the year 2100. The 1% AEP flood level for Metung is likely to increase by 0.8 metres to 2.9 metres AHD by 2100.

The *Guidelines for Coastal Catchment Management Authorities: Assessing development in relation to sea level rise* (DSE, 2012) outlines the Victorian Government response to the likely impacts of possible sea level rise. The Guidelines include policy direction allowing agreement between Councils and Catchment Management Authorities on appropriate flood level for anticipated sea level rise.

In April 2017 the East Gippsland Shire Council adopted Version 4 of the *Coastal Inundation and Erosion Planning Policy*. The Policy adopts the existing 1% AEP flood level as the benchmark flood level to be used to assess infill development against.

The applicable 1% AEP flood level for this property is 2.1 metres AHD.

The Authority holds no information in relation to the arrangement and capacity of stormwater drainage infrastructure in the area.

Flood Hazard Assessment

In accordance with East Gippsland Catchment Management Authority policy, where flood depth during a 1% AEP flood event is likely to exceed 0.5 metres over a property or 0.8 metres over the vehicle egress route from the property, a proposal that seeks to intensify development through the creation of additional lots or dwellings at a property is not supported as it would expose additional people and property to the flood hazard.

Table 1 demonstrates that the above criteria are met.

Waterways and Buffers

A designated waterway is located in the proposed area.

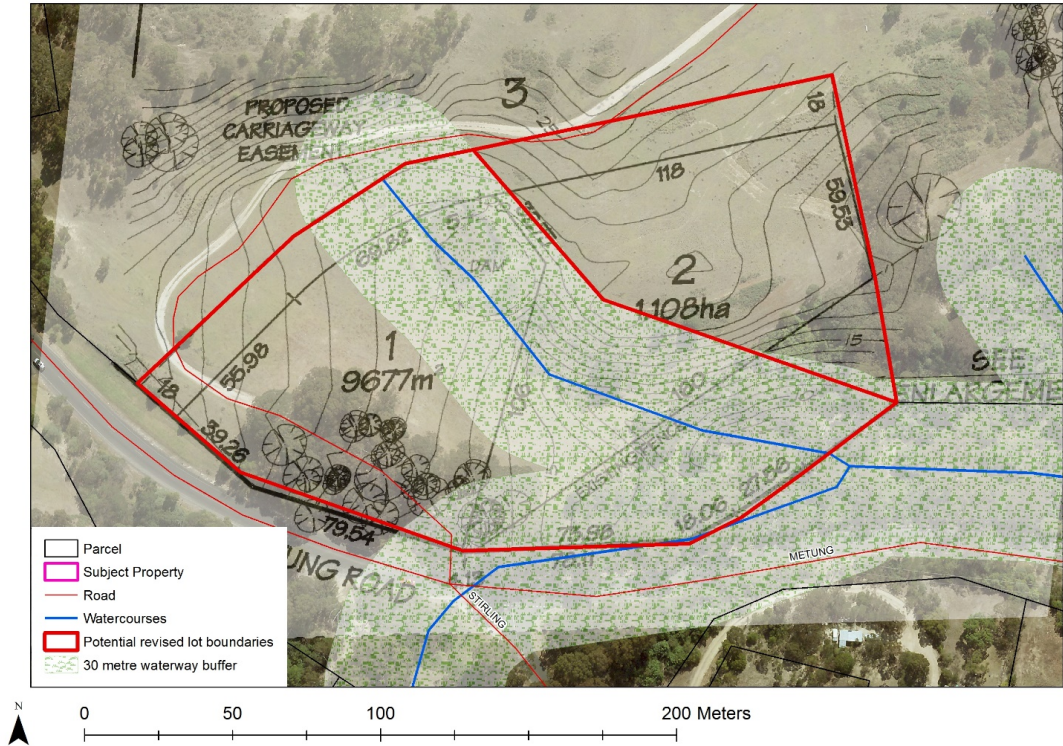
All designated waterways have been identified in Figure 2 below and require protection through the creation of reserves which require an ecological buffer of 30 metres either side of the designated waterway from the top of bank, or a buffer based on a flood study which identifies the 1% AEP flood extent, whichever is the greater.

The West Gippsland Catchment Management Authority's *Waterway Strategy (2014-2022)* also states that 'riparian corridors along waterways play an important role in maintaining and improving waterway health. The maintenance and restoration of riparian corridors are essential to provide the appropriate environmental conditions'. Ephemeral waterways or natural drainage corridors serve as conduits for conveying and treating rainfall runoff. While some minor waterways may have low environmental values, their function in conveying and treating runoff from surrounding catchments into major waterways plays a significant Floodplain Management and River Health role.

To ensure the long-term protection of the designated waterway a Waterway Management Plan is required.

It is noted that the current proposed lot layout would result in the designated waterway being located within three separate lots. The Authority requires that the designated waterway, and land within the 30 metre waterway buffer are within the boundaries of a single lot so that a single landowner is responsible for the ongoing management and protection of the waterway. To achieve this, the Authority requires that revised plans be submitted prior to certification of the Plan of Subdivision which show the designated waterway wholly contained within the boundaries of Lot 1. A potential revised lot layout is shown below for consideration.

Figure 2 – Potential revised lot layout



Definitions and Disclaimers

1. The area referred to in this letter as the 'proposed development location' is the land parcel(s) that, according to the Authority's assessment, most closely represent(s) the location identified by the applicant. The identification of the 'proposed development location' on the Authority's GIS has been done in good faith and in accordance with the information given to the Authority by the applicant(s) and/or the local government authority.
2. While every endeavour has been made by the Authority to identify the proposed development location on its GIS using VicMap Parcel and Address data, the Authority accepts no responsibility for or makes no warranty with regard to the accuracy or naming of this proposed development location according to its official land title description.
3. **AEP** as Annual Exceedance Probability – is the likelihood of occurrence of a flood of given size or larger occurring in any one year. AEP is expressed as a percentage (%) risk and may be expressed as the reciprocal of ARI (Average Recurrence Interval).

Please note that the 1% probability flood is not the probable maximum flood (PMF). There is always a possibility that a flood larger in height and extent than the 1% probability flood may occur in the future.

4. **AHD** as Australian Height Datum - is the adopted national height datum that generally relates to height above mean sea level. Elevation is in metres.
5. **ARI** as Average Recurrence Interval - is the likelihood of occurrence, expressed in terms of the long-term average number of years, between flood events as large as or larger than the design flood event. For example, floods with a discharge as large as or larger than the 100 year ARI flood will occur on average once every 100 years.
6. Nominal Flood Protection Level – is the minimum height required to protect a building or its contents, which includes a freeboard above the 1% AEP flood level.
7. No warranty is made as to the accuracy or liability of any studies, estimates, calculations, opinions, conclusions, recommendations (which may change without notice) or other information contained in this letter and, to the maximum extent permitted by law, the Authority disclaims all liability and responsibility for any direct or indirect loss or damage which may be suffered by any recipient or other person through relying on anything contained in or omitted from this letter.
8. This letter has been prepared for the sole use by the party to whom it is addressed and no responsibility is accepted by the Authority with regard to any third party use of the whole or of any part of its contents. Neither the whole nor any part of this letter or any reference thereto may be included in any document, circular or statement without the Authority's written approval of the form and context in which it would appear.
9. The flood information provided represents the best estimates based on currently available information. This information is subject to change as new information becomes available and as further studies are carried out.
10. Please note that land levels provided by the Authority are an estimate only and should not be relied on by the applicant. Prior to any detailed planning or building approvals, a licensed surveyor should be engaged to confirm the above levels.

Three lot subdivision, creation of access to a road in RDZ1, creation of a carriageway easement and use and development of a dwelling at 705 Metung Road, Metung

Relevant planning scheme considerations

Contents

The Planning Policy and Local Planning Policy Frameworks.....	2
Clause 21.12 Strategies for Sub-Regions, Towns & Localities	3
Metung Strategy Plan	6
Policy Framework Assessment.....	6
Zone Controls.....	7
Rural Living Zone (Schedule 2)	7
RLZ Assessment	8
Overlay Controls.....	9
Significant Landscape Overlay – Schedule 3	9
SLO3 Assessment	11
Bushfire Management Overlay	13
BMO Assessment	13
Erosion Management Overlay	14
EMO Assessment:	15
Land Subject to Inundation Overlay.....	15
LSIO Assessment	16
Environmental Significance Overlay 1-63.....	17
ESO1-63 Assessment:	18
Particular Provisions.....	19
Clause 52.02 – Easements, Restrictions and Reserves.....	19
Clause 52.29 - Land Adjacent to a Road Zone, Category 1	19
Clauses 52.02 and 52.29 Assessment	20
General Decision Guidelines.....	21
Approval of an Application or Plan.....	21
Approval of an Application to Subdivide Land	22
General Decision Guidelines Assessment:.....	22

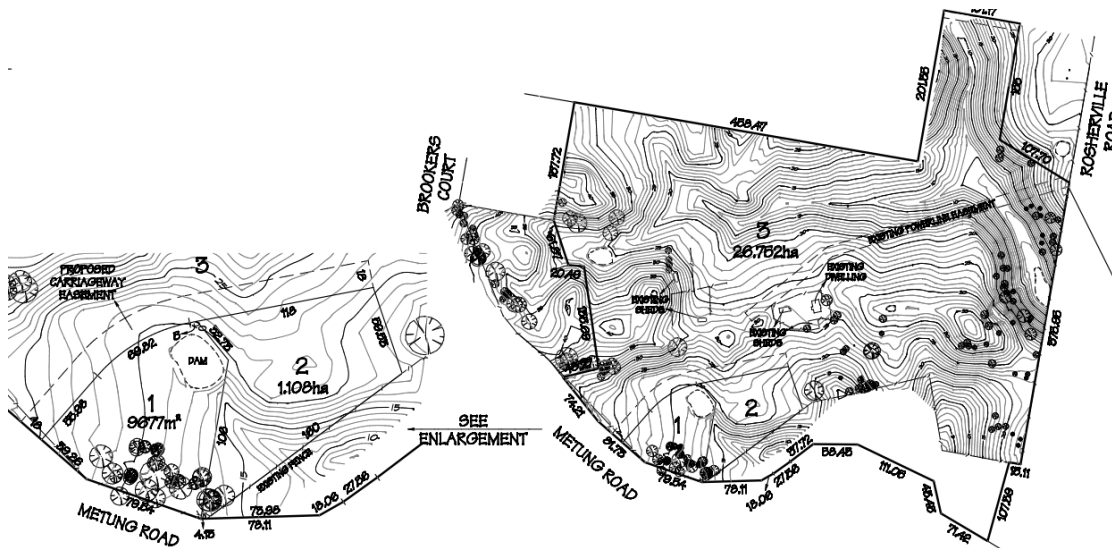


Figure 1 - Proposed Subdivision (V4 20/08/2019 – Crowther & Sadler)

The Planning Policy and Local Planning Policy Frameworks

The key elements for consideration are summarised as follows;

- Planning is to anticipate and respond to the needs of existing and future communities through provision of zoned and serviced land for housing...
- Planning should promote excellence in the built environment and create places that:
 - Are enjoyable, engaging and comfortable to be in.
 - Accommodate people of all abilities, ages and cultures.
 - Contribute positively to local character and sense of place.
 - Reflect the particular characteristics and cultural identity of the community.
 - Enhance the function, amenity and safety of the public realm.
- Ensure a comprehensive site analysis forms the starting point of the design process and provides the basis for the consideration of height, scale and massing of new development.
- Minimise the detrimental impact of development on neighbouring properties, the public realm and the natural environment.
- Ensure the form, scale, and appearance of development enhances the function and amenity of the public realm.
- Ensure buildings and their interface with the public realm support personal safety, perceptions of safety and property security.
- Ensure development responds to cultural identity and contributes to existing or preferred neighbourhood character.
- Planning should provide for housing diversity, and ensure the efficient provision of supporting infrastructure.
- Planning should ensure the long term sustainability of new housing, including access to services, walkability to activity centres, public transport, schools and open space.
- Increase the supply of housing in existing urban areas by facilitating increased housing yield in appropriate locations, including under-utilised urban land.

- Ensure housing developments are integrated with infrastructure and services, whether they are located in existing suburbs, growth areas or regional towns.
- Increase the proportion of new housing in designated locations within established urban areas and reduce the share of new dwellings in greenfield and dispersed development areas.
- Ensure an adequate supply of redevelopment opportunities within established urban areas to reduce the pressure for fringe development.
- Facilitate residential development that is cost effective in infrastructure provision and use, energy efficient, water efficient and encourages public transport use.
- Identify opportunities for increased residential densities to help consolidate urban areas.
- Support opportunities for a range of income groups to choose housing in well-serviced locations.
- Ensure a range of lot sizes and dwelling types to provide diversity and choice in new residential areas.

Clause 21.12 Strategies for Sub-Regions, Towns & Localities

Lakes & Coastal

Opportunities for the sub-region include:

- large areas of vacant land for future growth
- high landscape and natural values
- quality lifestyle
- strong tourism industry
- commercial fishing industry
- boating activities and recreational fishing
- attractive retirement area
- high quality beaches
- a variety of services including retail and commercial, education, health, social welfare, government agencies
- easy access to the sub-region via Princes Highway.

Constraints include:

- impacts of climate induced sea level rise and storm surge on vulnerable coastal areas
- need to protect lakes system from the undesirable effects of development, including siltation and nutrient input
- lack of employment opportunities for young people
- lack of service industrial sites in Lakes Entrance, Paynesville and Metung
- lack of reticulated sewerage system in some existing towns and future development areas
- mosquito problems
- lack of fully serviced land for future urban expansion in some centres
- demand for rural residential subdivision in areas outside current or proposed zonings
- conflicts over use of resources, such as commercial versus recreational fishing, shooting versus wildlife conservation.

Strategies for Lakes & Coastal sub-region include:

- assessing and prioritising the response to climate change impacts to ensure that the risks associated with sea level rise and storm surge are properly considered in future strategic planning and the assessment of development proposals in vulnerable areas

- protecting landscapes and natural values, particularly in coastal/lakes areas
- encouraging population growth and development in fully serviced residential land in the major towns
- supporting provision of reticulated sewerage in unserviced towns
- ensuring land availability for further development of tourism and service industry
- reinforcing the role of Bairnsdale as the main commercial, retail and service centre for East Gippsland, while upgrading and revitalising business centres in other towns to serve local and district level needs
- upgrading the townscapes of Lakes Entrance and Paynesville, to improve their appeal for residents and visitors
- recognising the need to provide for an aging population, including encouragement of new services and seeking resources to improve provision and maintenance of relevant Shire infrastructure (e.g. footpaths).

Metung

Vision

Metung will be a key destination for visitors to the Gippsland Lakes system and a significant boating hub.

It will continue to have a strong residential community. Preservation of environmental and landscape values will be a key priority.

It will have an attractive village centre that promotes community interaction, with extensive pathways linking the village centre to other attractions. The village will be contained and meet the day to day needs of residents and visitors, but there will remain a reliance on external sources for higher order goods and services.

The buildings in Metung will remain modest in scale – generally two to three levels. Materials and colours will complement the natural environment.

Objectives

- To retain the landscape setting, environmental qualities and lifestyle that contribute to the 'village' character of Metung.
- To ensure that development does not adversely affect landscape and environmental values.
- To support Metung's boating centre role and improve water access.
- To create a cohesive and attractive village centre.
- To improve pedestrian circulation and safety.

Strategies

- Ensure that the development of Metung occurs generally in accordance with the Metung Strategy Plan.
- Limit urban development to areas south of Metung – Nungurner Road and Hardys Road.
- Retain the north-east area of Metung as low density residential development, reflecting the physical constraints and existing character of the area.
- Ensure new development does not adversely affect landscape and environmental values and incorporates measures to protect those values including by protecting visually and environmentally significant native vegetation, the vegetated escarpment of Lake King and vegetated wildlife corridors; protecting wetlands; provision for on-site storm water

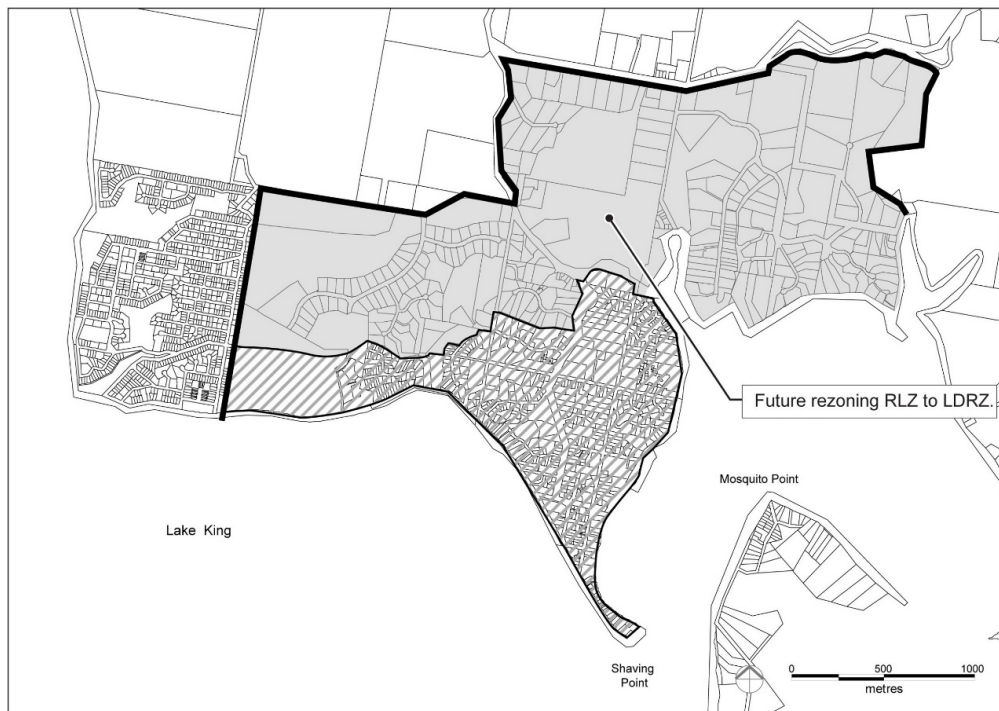
management and erosion protection; minimisation of building footprints; and encouraging additional planting of indigenous plant species.

- Contain commercial development to suitably zoned areas or approved sites.
- Provide better visual connections to the water and increase water edge activities.
- Limit building height to retain the human and village scale of the area.
- Provide additional parking opportunities on the fringe of the village centre.
- Ensure consistent signage that communicates an appropriate village theme.
- Improve pedestrian connections along both sides of the peninsula, providing waterfront links between the village centre and the rest of Metung.
- Ensure that development adjoining the Village Green and Patterson Park preserves the village atmosphere.
- If the resort proposal on the Storth Ryes site between Metung and Tambo Bluff does not go ahead, encourage the progressive development of this site for low density residential uses, subject to the preparation of an Incorporated Plan.
- Ensure that land use and development adjoining Metung Road, Nungurner Road and Kalimna West Road do not detract from the scenic landscape values of the road corridors and the views from them.

Further Strategic Work – Metung

- Investigate and facilitate the rezoning from Rural Living to Low Density residential of land between Metung Road and Rosherville Road as shown on the Strategy Plan.
- Review the Master Plan in the Metung Urban Design Framework.

Metung Strategy Plan



LEGEND

- Settlement Boundary
- Residential development area to 2020
- Low density residential area

The Metung Strategy Plan was last amended by Amendment C68 on 29/07/2010, reflecting the Coastal Settlement Urban Design Framework implementation.

Policy Framework Assessment

The proposal is generally consistent with the Metung Strategy Plan, in that the proposal remains subject to the Rural Living Zone provisions, but achieves a low density residential development character, with a large retained allotment which could be further subdivided if and when the strategic work to re-zone the land is undertaken, without prejudicing such an outcome. From the Metung Strategy Plan, the former 2010-era lot layout is noticeable. The subsequent subdivision approvals have related to the Low Density Residential Zone area to the northeast of the site/land, and the three-lot subdivision which reduced the size of one lot and created a new lot fronting Metung Road at the western side of the site.

The proposed subdivision will not have a direct impact on native vegetation, the boundaries of the proposed lots will be situated away from the remnant native vegetation to the southeast (rainforest and wetland gully environments). Existing fencing along the southern boundary of proposed lot 2 and continuing in an easterly direction around the rainforest system provides protection to the vegetation.

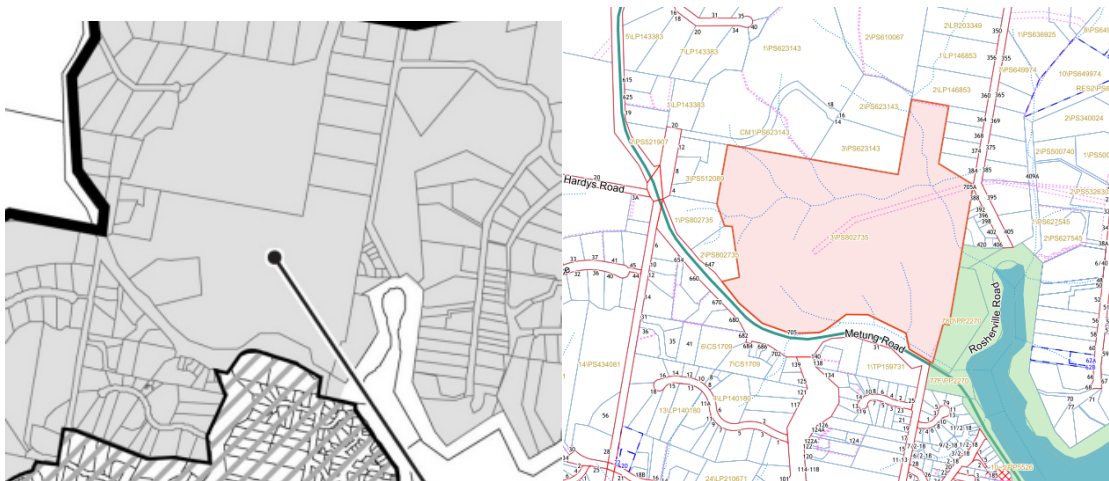


Figure 2 – Metung Strategy Plan and current lot layout plan.

The proposal considers other environmental factors such as erosion and bushfire in a satisfactory manner, as further outlined in the relevant overlay considerations. Conditions of the recommendation would further mitigate any environmental risks.

The proposal is considered to be infill development, in that it is within the established settlement boundary and the subject site is surrounded by LDRZ zoning on all sides, effectively. The proposal would allow for two additional dwellings ultimately, contributing to choice and availability of serviced (power, water, roads) land in the landscape.

It is put that the proposal is generally consistent with State and Local policy, particularly the Metung Strategy Plan.

Zone Controls

Rural Living Zone (Schedule 2)

Permit requirement

Under this zone a permit is required to subdivide land.

Under this Zone a permit is required to use and develop the land for a proposed dwelling as Lot 1 will be less than one hectare, for which use approval is required.

Purpose

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To provide for residential use in a rural environment.
- To provide for agricultural land uses which do not adversely affect the amenity of surrounding land uses.
- To protect and enhance the natural resources, biodiversity and landscape and heritage values of the area.
- To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.

Decision Guidelines:

General issues

- The Municipal Planning Strategy and the Planning Policy Framework.
- Any Regional Catchment Strategy and associated plan applying to the land.
- The capability of the land to accommodate the proposed use or development.
- Whether the site is suitable for the use or development and whether the proposal is compatible with adjoining and nearby land uses.

Agricultural issues

- The capacity of the site to sustain the agricultural use.
- Any integrated land management plan prepared for the site.
- The potential for the future expansion of the use or development and the impact of this on adjoining and nearby agricultural and other land uses.

Environmental issues

- The impact on the natural physical features and resources of the area and in particular any impact caused by the proposal on soil and water quality and by the emission of noise, dust and odours.
- The impact of the use or development on the flora, fauna and landscape features of the locality.
- The need to protect and enhance the biodiversity of the area, including the need to retain vegetation and faunal habitat and the need to revegetate land including riparian buffers along waterways, gullies, ridgelines, property boundaries and saline discharge and recharge area.
- The location of on-site effluent disposal areas to minimise the impact of nutrient loads on waterways and native vegetation.

Design and siting issues

- The impact of the siting, design, height, bulk, colours and materials to be used, on the natural environment, major roads, vistas and water features and the measures to be undertaken to minimise any adverse impacts.
- The impact on the character and appearance of the area or features of architectural, historic or scientific significance or of natural scenic beauty or importance.
- The location and design of existing and proposed infrastructure including roads, gas, water, drainage, telecommunications and sewerage facilities.
- Whether the use or development will require traffic management measures.

RLZ Assessment

The proposal is generally consistent with the objectives and application requirements of the Rural Living Zone. Although the minimum lot size is not achieved, the provision for subdivision in the zone provides that the land may be subdivided into smaller lots so long as the number of lots created is not more than the number which could be created if the minimum lot size was met. At approximately 28 hectares, the land can be subdivided into three lots.

Providing for subdivision nearby to the existing road alignment prevents widespread damage to the land for provision of services such as power and water and for additional driveways. There are many examples of rural living subdivisions in East Gippsland which similarly provide for balance allotments to reduce the cost of servicing the land and improving environmental outcomes on the balance of the land, so this proposal is consistent with these outcomes.

The smaller lot sizes also results in suitable ongoing agricultural/rural activity without removing two-thirds of the total area from potential production.

The land is subject to a Section 173 Agreement which provides that the land must not be subdivided into more than three lots. It is considered that this subdivision and the agreement combined will prevent further subdivision of the land, however to ensure there is no confusion, a condition is recommended which requires the ending of the current Agreement and implementation of a new agreement which prevents further subdivision of the land until or unless the land is rezoned to provide for increased density of development.

The proposed buildings and works are proposed to be minimally intrusive in the landscape, and benefit from existing vegetation near the road. Additional planting/landscaping could further reduce the impact of the built form, especially near the driveway.

Overlay Controls

Significant Landscape Overlay – Schedule 3

Permit requirement

Under this Overlay a permit *is not* required to subdivide land.

Under this Overlay a permit is required for buildings and works, so the assessment will relate to the proposed dwelling on proposed lot 1 only.

Purpose

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To identify significant landscapes.
- To conserve and enhance the character of significant landscapes.

Landscape Character and Objectives

METUNG AND LAKES ENTRANCE HILLS

Statement of nature and key elements of landscape

The Metung Hills provide a scenic backdrop to the settlement of Metung and to the expansive waters of Lake King. This prominent series of hills stretches to the township of Lakes Entrance, where they are an important part of the town's landscape setting. The Metung and Lakes Entrance Hills are visually of regional significance.

The hills provide a distinctive topographic edge to the surrounding lakes and plains, and to the built form of the settlements. These escarpments provide fine vistas out to sea and along the Ninety Mile Beach, and Jemmy's Point Lookout is a famous high point from which to admire the coastline and the ocean beyond. The hills have a largely natural character and a native vegetation cover that is biologically significant.

The views from the Metung and Lakes Entrance Hills feature on many of Victoria's tourist publications and attract visitors from across the state. The townships of Metung and Lakes Entrance are bases for recreation activities such as surfing, boating and fishing, and are also notable for their other landscape elements, including the ocean, lakes, islands and inlets.

Landscape character objectives to be achieved

To maintain and strengthen native and indigenous vegetation cover throughout the landscape, particularly on the prominent slopes above Lakes Entrance to reduce the visual impact of built

development, and around new developments to create linkages between existing bushland and forest parks and coastal vegetation.

To protect a vegetated and natural character in landscapes between Metung and Lakes Entrance.

To protect locally significant views and vistas that contribute to the character of the landscape, including extensive and scenic out-views from the settlements of Lakes Entrance and Lake Tyers Beach across the Gippsland Lakes and Ninety Mile Beach.

To ensure that development around settlements does not impact on the characteristics of the landscape, including key views and viewing opportunities.

To minimise and reduce the visual intrusion of buildings and structures at the lake edge of settlements.

To prevent lineal urban sprawl along main roads and key touring routes between settlements, particularly between Lakes Entrance and Metung.

To ensure buildings and structures sit within, rather than dominate the landscape, especially adjacent to lakes and waterways.

To minimise the visual impact of signage and other infrastructure, particularly on hill faces, in coastal areas and in other areas of high landscape values or visibility.

To ensure that the open rural character and scenic coastal features of this area are not dominated by plantation forestry.

To recognise and protect the landscape of the Metung and Lakes Entrance Hills as a place of significant Aboriginal cultural heritage value.

Decision Guidelines

- The statement of the nature and key elements of the landscape and the landscape character objective contained in a schedule to this overlay.
- The conservation and enhancement of the landscape values of the area.
- The need to remove, destroy or lop vegetation to create a defensible space to reduce the risk of bushfire to life and property.
- The impact of the proposed buildings and works on the landscape due to height, bulk, colour, general appearance or the need to remove vegetation.
- The extent to which the buildings and works are designed to enhance or promote the landscape character objectives of the area.
- The impact of buildings and works on significant views.

Buildings and Works

- Whether the proposed development is sited to maximise retention of existing vegetation, and whether it provides for the planting of new native vegetation wherever possible.
- Whether the proposal includes the use of indigenous or native vegetation in favour of exotic for landscaping works.
- Whether the proposed development uses low building forms integrated with the topography, with native landscaping to minimise visual intrusion in the foreground (up to 500 metres) of all key views and vistas.

- Whether the contrast between landscape and built development is minimised for any development greater than 500 metres from important scenic lookouts (e.g. from above Lakes Entrance).
- Whether proposed buildings are set back a sufficient distance from lake edges to allow for the protection or re-establishment of riparian vegetation and to minimise overlooking of the foreshore.
- At the lake edge of settlements, whether the height and form of new development is sensitive in scale to surrounding development, the surrounding landform and the visual setting of the settlement.
- In steep or hilly locations, whether proposed buildings are designed to follow the contours or step down the site, minimising the need for earthworks, and whether proposed buildings are articulated into separate elements to avoid visually dominant elevations.
- Whether the proposed development reduces the impact of development on the landscape by grouping buildings and setting buildings back long distances from roads.
- Whether the proposed development is kept below the dominant tree canopy height
- Whether the proposal includes pedestrian and vehicular access sited in less visible or previously disturbed areas
- The impact of developments visible from all key viewing corridors (e.g. touring routes, highways) and scenic lookouts on the open rural character of these views, and the availability of scenic views to the ocean, or lakes
- The impact of developments visible from lakes on the natural vegetated character of escarpment edges
- In rural residential areas, whether the proposed development:
 - Uses permeable surfacing for all unbuilt areas to minimise surface run-off and to support vegetation;
 - retains continuous trees canopy and will result in the planting of new trees to add to this canopy;
 - utilises vegetation for screening and to delineate property boundaries, instead of fencing;
 - provides open style fencing of a type traditionally used in rural areas i.e. post and wire (where fencing is necessary); and,
 - is located on the site to minimise views of the building from the main road.
- Whether the proposed development is an extension or alteration to a development already in existence on the land.

SLO3 Assessment

The proposal triggers assessment for the proposed buildings and works for a dwelling. The proposed dwelling is somewhat unconventional for a modern dwelling, in that the design is primarily for Colorbond Cladding with feature low brick wall to the entry, verandah, and dining room window.

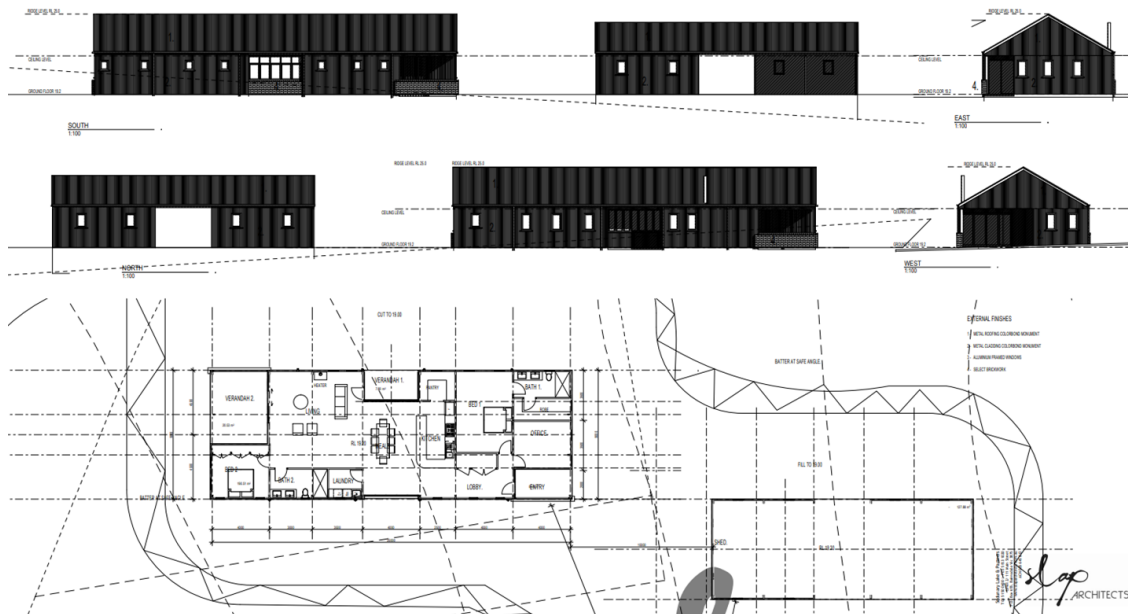


Figure 3 Overall floor plan and elevation

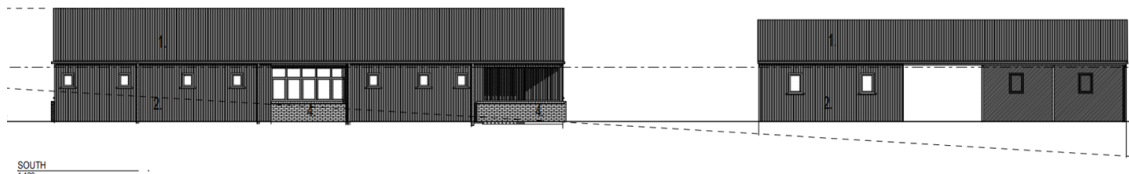


Figure 4 – South (road facing) elevations

The proposed dwelling, being single storey, and having height of approximately 6 metres from natural ground level, although the dwelling site is cut in over 1 metre from natural ground level, so the dwelling will be recessed into the land, and will not be visually prominent. There is vegetation along the southern boundary that will mitigate a part of the dwelling impact from the street and properties opposite, however it will be highly visible from the proposed access/carriageway.

Objectors have raised concerns specifically about the form and design of the proposed dwelling, and the impact it will have on the entry to Metung. The main concern is that it will diminish the rural outlook, and damage the character of the entry statement they believe is significant and unique to coastal towns, especially to the other lakeside towns in East Gippsland. The objectors contend that the proposal is unsuitable as a result.

Concerns can be addressed either by:

- Requiring amended plans to propose a dwelling which better meets the character objectives of the overlay; or
- Requiring landscaping to further mitigate the visual impact of the proposed dwelling in the landscape setting.

It is considered that the option to improve the landscaping on the allotment is more of an appropriate solution, although such landscaping needs to consider bushfire risk. As such, a condition is recommended which imposes a requirement for screening vegetation in the western corner of the proposed lot 1, including rehabilitation of the redundant driveway, while avoiding landscaping which contravenes the defensible space provisions of

A future dwelling on proposed Lot 2 will trigger a planning permit under the Significant Landscape Overlay. Consideration will need to be given to the design of the dwelling in accordance with the objectives of the overlay and decision guidelines, and similar conditions may be imposed to mitigate impacts of the development in the landscape.

Bushfire Management Overlay

Permit requirement

Under this Overlay a permit is required to subdivide land.

Under this Overlay a permit is required to carry out buildings and works for a dwelling.

Purpose

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To ensure that the development of land prioritises the protection of human life and strengthens community resilience to bushfire.
- To identify areas where the bushfire hazard warrants bushfire protection measures to be implemented.
- To ensure development is only permitted where the risk to life and property from bushfire can be reduced to an acceptable level.

BMO Assessment

The BMO applies to the majority of the site. For subdivision in the BMO where development will likely occur, an application must assess the site suitability for a dwelling envelope with appropriate managed area. The proposal provides for the development of a dwelling on Lot 1, therefore the new building envelope is required for Lot 2 only. The original response from CFA required the applicant to prepare a revised plan to provide greater defensible space to the south west of the building envelope (reducing the area of the envelope).

The applicant submitted revised plans which received conditional consent from CFA as outlined in **Attachment 5**.

The bushfire management plan for Lots 1 & 2 will be registered in a Section 173 Agreement before the statement of compliance is issued, to ensure that the future development of a dwelling will be in accordance with the submitted bushfire management plan. The dwelling on proposed Lot 1 could be altered from its current form, but will necessitate an amendment and review of revisions by both the responsible authority and CFA. With the BMP registered through the S. 173 agreement for Lot 2, it is likely that a planning permit will not be required if the position of the proposed dwelling and construction methods accord with the BMP.

With the application being supported by CFA, there is no significant concerns from a bushfire perspective that relate to the site and proposed subdivision and development. Risk can be mitigated to an acceptable level.

Objectors presented concerns with respect to the strategic effect of the subdivision on the local bushfire preparedness and response, citing the local CFA Brigade's use of the site during the Black Summer bushfires to plan for and protect Metung townsite. Officers are aware that CFA has successfully purchased land at 3 Hardys Road, Metung and will propose an emergency services facility at that location in the near future. The subject land could continue to assist local bushfire response, but the impact of the development would mean the site has increased flammable objects and reduced area to set up fire containment.

The subject land is privately owned. Any use of the land for strategic fire break is by permission of the landowner. There is not indication that the permissions would change as a result of the proposed subdivision and development.

Erosion Management Overlay

Permit requirement

A permit is required to construct a building or construct or carry out works (except as outlined in a schedule to the overlay).

A permit is required to subdivide land.

A permit is required to remove, destroy or lop any vegetation specified in a schedule to this overlay.

Purpose

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To protect areas prone to erosion, landslip, other land degradation or coastal processes by minimising land disturbance and inappropriate development.

Erosion management objectives to be achieved

To ensure that applications for the development of land subject to high or very high geotechnical hazard are accompanied by expert geotechnical risk assessments.

To ensure that development is designed and carried out in accordance with the recommendations of expert geotechnical risk assessments.

To ensure that development does not increase the risk of geotechnical hazard to life or property.

To encourage the rehabilitation of land affected by geotechnical hazard.

Decision Guidelines:

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

- The Municipal Planning Strategy and the Planning Policy Framework.
- Regional Catchment Strategy (Catchment and Land Protection Act 1994).
- Civil construction, building and demolition guide (Publication 1834, Environment Protection Authority, November 2020).
- Control of Erosion on Construction Sites, Soil Conservation Authority.
- Your Dam, an Asset or a Liability, Department of Conservation and Natural Resources.
- Any proposed measures to manage concentrated runoff and site drainage.
- Any proposed measures to minimise the extent of soil disturbance.

- The need to stabilise disturbed areas by engineering works or revegetation.
- Whether the land is capable of providing a building envelope which is not subject to high or severe erosion concern.
- Whether buildings or works are likely to cause erosion or landslip.
- Whether access and servicing of the site or building envelope is likely to result in erosion or landslip.
- Land Capability Report (if prepared) as developed by the Department of Environment, Land, Water and Planning.
- The need to remove, destroy or lop vegetation to create defensible space to reduce the risk of bushfire to life and property.
- Any technical information or reports required to be provided by a schedule to this overlay.
- The risk to life, property and community infrastructure from geotechnical hazard.
- The recommendations of any geotechnical risk assessment and application documentation.
- The recommendations of any independent review of the geotechnical risk assessment and application documentation.
- The need for any ongoing geotechnical risk management measures.

EMO Assessment:

The application triggers the need for approval for:

- Subdivision of land
- Earthworks greater than 1 metre from natural ground level (for the establishment of the dwelling on Lot 1 and to decommission the dam).

The application was supported by the submitted Geotechnical Risk Assessment Report prepared by Simon Anderson Consultants, a suitably qualified professional. The application has been reviewed by the Senior Technical Officer – Development who finds that the proposal is appropriate. Standard subdivision and development conditions are recommended to address erosion risk.

The proposed decommissioning of the dam is considered to have minimal impact on erosion risk. It is acknowledged that the flow regime will be altered, but this should be consistent with the pre-settlement conditions, with the exception of the impacts of the newly proposed dwelling development.

Land Subject to Inundation Overlay

Purpose

To implement the Municipal Planning Strategy and the Planning Policy Framework.

To identify flood prone land in a riverine or coastal area affected by the 1 in 100 (1 per cent Annual Exceedance Probability) year flood or any other area determined by the floodplain management authority.

To ensure that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, responds to the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.

To minimise the potential flood risk to life, health and safety associated with development.

To reflect a declaration under Division 4 of Part 10 of the *Water Act, 1989*.

To protect water quality and waterways as natural resources by managing urban stormwater, protecting water supply catchment areas, and managing saline discharges to minimise the risks to the environmental quality of water and groundwater.

To ensure that development maintains or improves river, marine, coastal and wetland health, waterway protection and floodplain health.

Decision Guidelines

- Any local floodplain development plan.
- Any comments from the relevant floodplain management authority.
- The existing use and development of the land.
- Whether the proposed use or development could be located on flood-free land or land with a lesser flood hazard outside this overlay.
- Alternative design or flood proofing responses.
- The susceptibility of the development to flooding and flood damage.
- The potential flood risk to life, health and safety associated with the development. Flood risk factors to consider include:
 - The frequency, duration, extent, depth and velocity of flooding of the site and accessway.
 - The flood warning time available.
 - Tidal patterns.
 - Coastal inundation and erosion.
 - The danger to the occupants of the development, other floodplain residents and emergency personnel if the site or accessway is flooded.
- The effect of the development on redirecting or obstructing floodwater, stormwater or drainage water and the effect of the development on reducing flood storage and increasing flood levels and flow velocities.
- The effect of the development on river, marine and coastal health values including wetlands, natural habitat, stream stability, erosion, environmental flows, water quality, estuaries and sites of scientific significance.

LSIO Assessment

The LSIO applies to a limited area at the eastern corner of the site, adjacent to Chinamans Creek. The subdivision of land is a planning permit trigger, however the proposal does not increase risk from flooding in the overlay area. The application triggers a mandatory (S55) referral to Catchment Management Authority, which was undertaken late in the assessment process. Despite the late referral, it is unlikely that there will be an objection or conditions relating to this control. As such it is not considered further.

A S52 referral was also undertaken as the mapped waterways are impacted by the proposed subdivision. The conditions requested by CMA relate to the waterway, not the LSIO, and therefore there is discretion to impose the recommended conditions or not. The response is discussed in the main report under Engagement.

Environmental Significance Overlay 1-63

Purpose

To implement the Municipal Planning Strategy and the Planning Policy Framework.

To identify areas where the development of land may be affected by environmental constraints.

To ensure that development is compatible with identified environmental values.

Statement of environmental significance

The overlay areas comprise Sites of Biological Significance containing specific values as listed in Table 1 and representing either: rare or threatened species; restricted, rare or threatened vegetation communities; vegetation which is important as a corridor; high species richness; or other unusual biological features.

The sites include suitable habitat for either the local population or the local occurrence of a species or community.

Environmental objective to be achieved

To ensure that development occurs so as not to adversely impact upon the environmental values of the site or any other value that may be identified within the overlay area.

To conserve and enhance the environmental sustainability and ecological integrity of these values.

Decision Guidelines

- The statement of environmental significance and the environmental objective contained in a schedule to this overlay.
- The need to remove, destroy or lop vegetation to create a defensible space to reduce the risk of bushfire to life and property.

Before deciding on an application, in addition to the decision guidelines in Clause 42.01-4, the responsible authority should consider whether works and development pose a threat to ecological sustainability of values listed for that area and whether such threats can be adequately managed through adoption of any relevant management practices listed below:

- Reduce or limit the extent of inappropriate clearing and harvesting of native vegetation.
- Undertake revegetation with appropriate indigenous species to offset any loss of environmental values resulting from the works or development.
- Fence areas of remnant native vegetation and revegetated areas so as to protect and limit further degradation to environmental values.
- Develop a land management plan or works program encompassing a range of management practices implemented over a period of time.
- Any relevant management practices as listed in the table below.

PS Map Ref	Site Ref No.	Site Name	Statement of Environmental Significance	Management Practices
SO1-63	16A01191	Rosherville Road Corridor	Wildlife Corridor	Encourage landholders to fence vegetation remnants.

				<p>Encourage cooperative fox control programs which minimise risk to non-target species.</p> <p>Encourage application of appropriate fire regime.</p> <p>Design a road maintenance strategy which avoids damage to roadside vegetation.</p> <p>Encourage parallel plantings on freehold land to widen corridor.</p> <p>Encourage revegetation of any vegetation gaps along the corridor.</p>
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ESO1-63 Assessment:

There is no direct vegetation removal required to facilitate the proposed use and development.

Significant concerns have been raised by objectors in relation to the impact of the proposed subdivision and development on the adjacent rainforest. The majority of the rainforest is not mapped to the ESO1-63, and is therefore only protected by the VPO and Clause 52.17. As there is no vegetation removal proposed, neither of these considerations are relevant.

The application has been referred (s52 notice) to DELWP late in the assessment process. The applicant had identified that the new lots would not be within the ESO area, however in the ESO, subdivision in the overlay is a permit trigger and the affected land is partially subject to the overlay. A referral (s52) is a requirement. A response dated 11 January 2022 confirms there is no objection to the grant of a planning permit, but DELWP may comment on the rainforest.

While the proposal seeks to minimise impacts by limiting the proposed smaller lots to the northwest side of the remnant forest system, the objectors are concerned about the impact of hard surfaces and 'residential' land management can have. Some suggestions raised during the assessment process have included:

- Retaining the dam for its ecological value
- Requiring a conservation covenant or to reserve the rainforest area
- Altering the proposed lot layout to move further away from the rainforest.

Considering the Overlay, the management practices recommended could reasonably be adopted as planning permit conditions. Revegetation is less of a suitable outcome due to the bushfire risk associated with increasing fuel load within the property boundaries, even if meeting the defendable space requirements. Within proposed Lot 3, however, additional planting could be achieved, as well as a suitable management plan and fencing of key areas. Fencing already

exists along the southeastern boundary of proposed lot 2, extending internal to proposed lot 3, on the northwestern boundary of the rainforest.

Setbacks could also be imposed, in addition to the bushfire management building envelopes established through the subdivision, to limit indirect vegetation removal threats such as root protection damage and overhanging branches.

Suitable conditions of approval are recommended at **Attachment 1** to limit potential loss of vegetation

Particular Provisions

Clause 52.02 – Easements, Restrictions and Reserves

Purpose

To enable the removal and variation of an easement or restrictions to enable a use or development that complies with the planning scheme after the interests of affected people are considered.

Permit requirement

A permit is required before a person proceeds:

- Under Section 23 of the Subdivision Act 1988 to create, vary or remove an easement or restriction or vary or remove a condition in the nature of an easement in a Crown grant.

Decision guidelines

Before deciding on an application, in addition to the decision guidelines in clause 65, the responsible authority must consider the interests of affected people.

Clause 52.29 - Land Adjacent to a Road Zone, Category 1

Purpose

To ensure appropriate access to identified roads.

To ensure appropriate subdivision of land adjacent to identified roads.

Permit requirement

A permit is required to:

- Create or alter access to:
 - A road in a Road Zone, Category 1.
 - Land in a Public Acquisition Overlay if the purpose of acquisition is for a Category 1 road.
- Subdivide land adjacent to:
 - A road in a Road Zone, Category 1.
 - Land in a Public Acquisition Overlay if the purpose of acquisition is for a Category 1 road.

Decision guidelines

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider:

- The Municipal Planning Strategy and the Planning Policy Framework.
- The views of the relevant road authority.
- The effect of the proposal on the operation of the road and on public safety.

- Any policy made by the relevant road authority pursuant to Schedule 2, Clause 3 of the Road Management Act 2004 regarding access between a controlled access road and adjacent land.

Clauses 52.02 and 52.29 Assessment

The proposal includes a new central driveway servicing proposed lots 1 and 2 and balance Lot 3. The driveway will be located on Lot 3, generally consistent with the current driveway, but modified to provide a new access point to Metung Road, generally opposite 680 Metung Road. An 18 metre wide carriageway is proposed, starting at the street frontage and continuing along the frontages of lots 1 and 2. The proposed access has been assessed by the Department of Transport, who require the proposed crossover to become the sole access point to the land, and for no new access to be created from Metung Road to Proposed Lot 1.

This is considered to be a good outcome from the perspective of road safety. The current driveway and crossover is located approximately 150 metres southeastward, closer to the intersection with Stirling Road and on a sharper bend in the road. The site visits undertaken by officers compared the sight lines experienced, and the proposed location allows for greater visibility to the east and west, allowing for safer egress. The existing location has established vegetation which can limit the sight lines, and makes identifying the access difficult from the Road, whereas the proposed location would have very limited screening, allowing visibility to be greatly increased.

Objections have been raised in relation to the new driveway crossover location regarding lightspill from headlights shining into the opposite property. There will be a slight uphill climb to the road, and the opposite dwelling is also elevated. It is feared that lights will shine directly into habitable rooms, which will impact on privacy. The property opposite is zoned Low Density Residential Zone, and is also covered by the Bushfire Management Overlay.

The applicant contends that the actual siting of the driveway egress will be located further southeast along Metung Road, rather than directly opposite 680 Metung Road, and as a result there is an embankment that will reduce the impacts, as demonstrated in **Figure 5**.



Figure 5 – Estimated path of proposed driveway and crossover.

It would be possible to increase screening vegetation within the opposite property to reduce lightspill. Due to the distance between the road and dwelling, there is no compulsory requirement for screening for the existing dwelling nor for the proposed dwelling.

Ultimately for these particular provisions, road safety considerations are given priority, and the proposed new access and carriageway is considered an appropriate response to the challenges of the proposed subdivision and future traffic generated.

General Decision Guidelines

Approval of an Application or Plan

Before deciding on an application or approval of a plan, the responsible authority must consider, as appropriate:

- The matters set out in section 60 of the Act.
- Any significant effects the environment, including the contamination of land, may have on the use or development.
- The Municipal Planning Strategy and the Planning Policy Framework.
- The purpose of the zone, overlay or other provision.
- Any matter required to be considered in the zone, overlay or other provision.
- The orderly planning of the area.
- The effect on the environment, human health and amenity of the area.
- The proximity of the land to any public land.
- Factors likely to cause or contribute to land degradation, salinity or reduce water quality.

- Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.
- The extent and character of native vegetation and the likelihood of its destruction.
- Whether native vegetation is to be or can be protected, planted or allowed to regenerate.
- The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.

Approval of an Application to Subdivide Land

Before deciding on an application to subdivide land, the responsible authority must also consider, as appropriate:

- The suitability of the land for subdivision.
- The existing use and possible future development of the land and nearby land.
- The availability of subdivided land in the locality, and the need for the creation of further lots.
- The effect of development on the use or development of other land which has a common means of drainage.
- The subdivision pattern having regard to the physical characteristics of the land including existing vegetation.
- The density of the proposed development.
- The area and dimensions of each lot in the subdivision.
- The layout of roads having regard to their function and relationship to existing roads.
- The movement of pedestrians and vehicles throughout the subdivision and the ease of access to all lots.
- The provision and location of reserves for public open space and other community facilities.
- The staging of the subdivision.
- The design and siting of buildings having regard to safety and the risk of spread of fire.
- The provision of off-street parking.
- The provision and location of common property.
- The functions of any body corporate.
- The availability and provision of utility services, including water, sewerage, drainage, electricity and gas.
- If the land is not sewered and no provision has been made for the land to be sewered, the capacity of the land to treat and retain all sewage and sullage within the boundaries of each lot.
- Whether, in relation to subdivision plans, native vegetation can be protected through subdivision and siting of open space areas.

General Decision Guidelines Assessment:

The proposed scale of subdivision, use and development is considered to be generally consistent with the zone and overlay provisions, and the relevant policy framework. It will not have significant detrimental impact to the environment or amenity of the locality. It will result in changes to the existing landscape, but not to the extent of being detrimental. The low density/rural living character of the area will not be significantly altered. Future landscaping and screening, considerate of bushfire impact, will mitigate the visual impact of the development from the road.

A key consideration resolved through the recommendation is in respect to the current legal agreement (s173 Agreement) registered on the title. Although the Agreement prohibits subdivision of the land subject to the Agreement into more than three lots, and a three lot subdivision has already been applied to the land with no modification to the Agreement, Council has discretion for an alternative outcome to be approved. In this case, the recommendation is to allow for the subdivision to occur, and to end the agreement and replace with a new Agreement which will prevent any further subdivision unless the land is rezoned.

The late objection by George Neophytou Law highlights the same consideration, but suggests that there is insufficient information to support Council's consideration of this matter. Not contained in the application documentation originally, but supplied after and included in the copy of the application referred to in Attachment 2 is page 86 – a plan demonstrating the history of the subdivision of the land.

In discussion with the applicant, it is considered that second to last subdivision altered the requirements of the legal agreement on the balance allotment, but reduced the entitlements to three lots in error, as the effect of that subdivision was an amendment to the lot layout for the LDRZ section of the land. At that time, there was a condition to alter the number of lots which could be created. The applicant has contended verbally that they believe from the original subdivision to today, the number of overall entitlements has not been exceeded. Officers have accepted this claim, and as such make the recommendation for approval.

5.3.3 Planning Application 284/2019/P – For Refusal - Five lot subdivision, removal of native vegetation, and subdivision adjacent to a road in RDZ1 at 705 Bengworden and 80 Comleys Road Goon Nure

Authorised by General Manager Place and Community

Conflict of Interest

Officers preparing this report have no conflict of interest to declare.

Executive Summary

The purpose of this report is to present to Council a recommendation for refusal of Planning Permit Application 284/2019/P. The application (**Attachment 1**) seeks approval for a Five Lot Subdivision and Removal of Native Vegetation, at 705 Bengworden and 80 Comleys Road, Goon Nure, in accordance with the subdivision provisions of the Farming Zone (Schedule 1), Environmental Significance Overlay (Schedule 1-43), Erosion Management Overlay, Bushfire Management Overlay, Vegetation Protection Overlay (Schedule 1) and the native vegetation particular provision of the East Gippsland Planning Scheme.

The application originally included a carriageway easement along the northern boundary of Lot 5 for access to Lots 1-4. Department of Transport (DoT) is a referral authority and their response required Lot 1 to be accessed from Comleys Road rather than Bengworden Road and for the carriageway easement to be removed.

In response to the DoT referral comments, the applicant has amended the application by deleting the carriageway easement and access from the Road Zone Category 1 as required by DoT. The layout of the subdivision remains the same.

As a result of addressing DoT requirements, Lots 1-4 are proposed to have direct access from Comleys Road and Aerodrome Road. The direct access points for Lot 3 and 4 will require native vegetation to be removed which triggers a permit that previously was avoided.

Re-notification was undertaken in the form of letters to adjoining landowners, occupiers and previous objectors and placing of a notice in the local newspaper, in accordance with Section 52 of the *Planning and Environment Act 1987*.

Original instructions for notification of the proposal attracted six objections. The re-advertising of the amended application has attracted an additional 14 objections (Total of 20). Of the initial six objections, two objectors made further comments. Copies and further details of the objections are at **Attachment 4**.

Due to the number of additional objections and in accordance with the Planning Permit Applications Delegations Policy 2018, the matter is referred to a Planning Consultation Meeting before being reported to Council for determination.

A Planning Consultation Meeting was conducted on 22 November 2021 where the objectors in attendance expressed their concerns mostly relating to land fragmentation, loss of productive agricultural land, noise, traffic, safety and access issues.

The application was referred to relevant referral authorities, all of whom raised no objection whilst providing responses (**Attachment 3**) with conditions to be included in the permit, if issued.

A detailed assessment (**Attachment 2**) against the East Gippsland Planning Scheme has been undertaken, and the proposal is viewed as being inconsistent with relevant planning policies. Additionally, based on the content of the objections received as well as concerns in relation to the suitability and protection of quality agricultural land use, compatibility with adjoining and nearby land uses and the retention of vegetation and fauna habitat, the recommendation is to refuse the proposal.

Pursuant to the instrument of delegation, a planning permit application may only be refused by decision of Council.

The officer recommendation is to issue a Notice of Refusal to Grant a planning permit based on the grounds of refusal outlined below.

Officer Recommendation

That Council:

- 1. receives and notes this report and all attachments pertaining to this report and,***
- 2. being the Responsible Authority and having considered all the relevant planning matters, determines that planning application 284/2019/P at 705 Bengworden Road and 80 Comleys Road, Goon Nure is inconsistent with the requirements and objectives of the East Gippsland Planning Scheme and therefore resolves to issue a Notice of Decision to Refuse to Grant a Permit in accordance with the following grounds of refusal:***
 - a. The proposed subdivision is contrary to the Victoria Planning Provisions at Clause 14.01-S of the Planning Scheme, in relation to the following strategies:***
 - Avoid permanent removal of productive agricultural land from the state's agricultural base without consideration of the economic importance of the land for the agricultural production and processing sectors.***
 - Protect productive farmland that is of strategic significance in the local or regional context.***
 - Protect productive agricultural land from unplanned loss due to permanent changes in land use.***
 - Avoid the subdivision of productive agricultural land from diminishing the long-term productive capacity of the land.***
 - b. The proposed subdivision is inconsistent with and does not adequately respond to the purpose and relevant decision guidelines of the Farming Zone (Schedule 1) at Clause 35.07 in that it does not provide for the use of the land for agriculture nor encourage the retention of productive agricultural land.***
 - c. The proposed subdivision has the potential to lead to development that is incompatible with the existing use of the surrounding land.***
 - d. The proposed subdivision is inconsistent with proper and orderly planning for the area.***

Background

The subject site and surrounding context

The site is located 6 km south-west of Bairnsdale and 500 metres south of the Bairnsdale Airport. The land is comprised of two abutting parcels with a combined area of 250.1 hectares. An existing dwelling and associated outbuildings are located in the south-westernmost corner of the site.

The site is zoned Farming Zone (Schedule 1), Environmental Significance Overlay (Schedule 1-43), Vegetation Protection Overlay (Schedule 1), Bushfire Management Overlay and Erosion Management Overlay.

The land is relatively flat and cleared of vegetation. A patch of vegetation of 10 hectares is located to the south-eastern most corner of the land. This patch of vegetation is identified as remnant native vegetation which is part of a larger cluster existing on adjoining properties to the south.

The site is abutted on three sides by roads, Comleys Road, Aerodrome Road and Bengworden Road. Bengworden Road is the only made road and is declared a road in a Road Zone, Category 1.

All three abutting roads have established rows of remnant and introduced canopy trees along the road verge, or farm boundary of the subject land. Three access points exist, one from each abutting road. Access is via a gravel crossover along Bengworden Road.

The proposal

The planning permit application seeks approval for a five-lot subdivision and removal of native vegetation. Detailed plans and documentation of the application are available via the advertised application documents hyperlink at **Attachment 1**.

The application proposes subdivision of the existing 250-hectare site into five parcels with:

- Lots 1 to 4 to be subdivided into parcels ranging from 40.02ha to 41.57ha and all fronting Comleys Road to the north.
- Lot 5 is located along the entire southern boundary of Lots 1-4 and spans from Bengworden to Aerodrome Road with an area of 87.66ha.
- Proposed Lot 5 would contain the existing dwelling, its curtilage and the carriageway easement access from Bengworden Road for the proposed lots.
- Removal of native vegetation for Lot 3 and 4 that is required to establish the vehicle crossings.

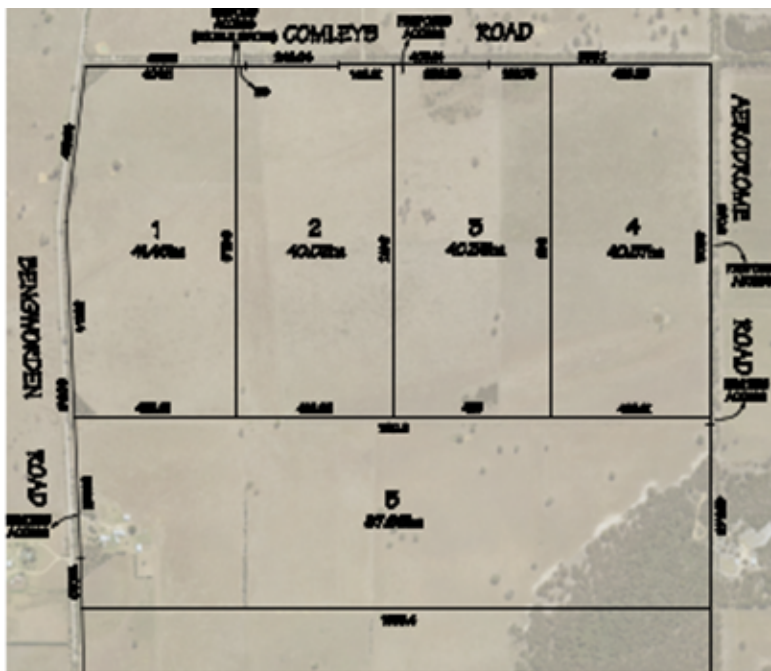


Figure 1 – Proposed Plan of Subdivision

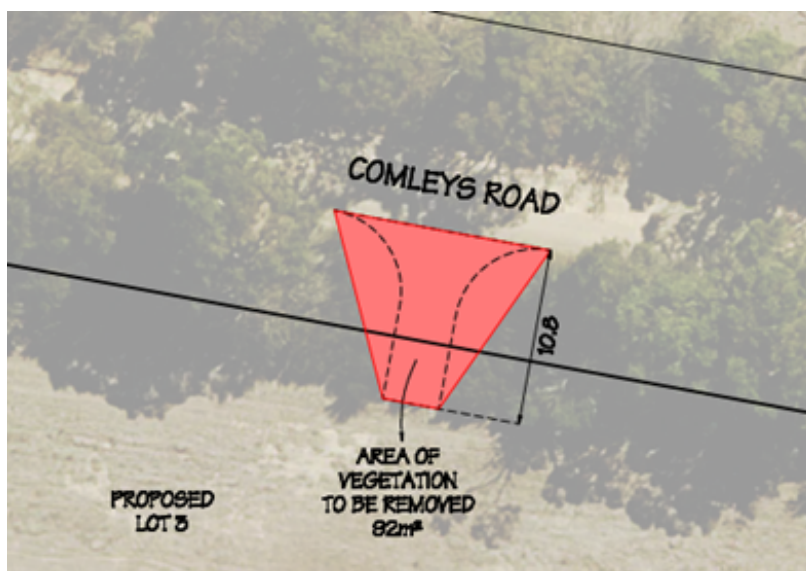


Figure 2 – Proposed area of vegetation removal on Lot 3



Figure 3 – Proposed area of vegetation removal on Lot 4

Legislation

The proposal is considered in accordance with the provisions of the *Planning and Environment Act 1987*.

The implications of this report have been assessed and are not considered likely to breach or infringe upon the human rights detailed in the Victorian Government's Charter of *Human Rights and Responsibilities Act 2006*.

East Gippsland Planning Scheme

The key aspect of decision making in relation to this matter is to ensure that the application has appropriately addressed all the relevant planning policy, purposes and objectives of the zone, overlays and Particular Provisions relating to the subject site and immediate surrounds. A more detailed assessment against the relevant policy, zone purposes and objectives is included in the detailed Planning Scheme assessment at **Attachment 2**.

The subject land is zoned Farming Zone (Schedule1) and is affected by the Bushfire Management Overlay (BMO), Environmental Significance Overlay (Schedule 1-43), Erosion Management Overlay and Vegetation Protection Overlay (Schedule 1).

A planning permit to subdivide land is required under the FZ1, BMO, ESO1-43 and EMO. A planning permit to remove native vegetation is required under VPO1 and Clause 52.17.

Planning policy relating to the proposal generally seeks to:

- Direct development to appropriately zoned and serviced land;
- Protect productive agricultural land;
- Protect environmental features of significance; and
- Ensure that human life and property is not placed at an unacceptable level of risk.

Clause 14.01-1S (Victoria Planning Provisions) provides for the protection of agricultural land.

Strategies included for this purpose include:

- *“Avoid permanent removal of productive agricultural land from the state's agricultural base without consideration of the economic importance of the land for the agricultural production and processing sectors.*
- *Protect productive farmland that is of strategic significance in the local or regional context.*
- *Protect productive agricultural land from unplanned loss due to permanent changes in land use.”*

Clause 14.01- 1S also includes:

“In considering a proposal to use, subdivide or develop agricultural land, consider the:

- *Desirability and impacts of removing the land from primary production, given its agricultural productivity.*
- *Impacts on the continuation of primary production on adjacent land, with particular regard to land values and the viability of infrastructure for such production.*
- *Compatibility between the proposed or likely development and the existing use of the surrounding land.”*

Farming Zone (Schedule 1)

The purpose of the zone is as follows:

- ***To provide for the use of land for agriculture.***
- ***To encourage the retention of productive agricultural land.***
- ***To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.***
- *To encourage the retention of employment and population to support rural communities.*
- *To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.*
- *To provide for the use and development of land for the specific purposes identified in a schedule to this zone.*

Pursuant to Clause 35.07-3 in relation to the Farming Zone, a permit is required to subdivide land. Each lot must be at least the area specified for the land in a schedule to this zone. Pursuant to Section 1.0 to the Schedule of the FZ1, a minimum lot size of 40 hectares is specified.

Lots 1 to 4 are to be subdivided into parcels ranging from 40.31ha to 41.17ha and Lot 5 is to be subdivided with an area of 87.66ha.

The Decision Guidelines require the consideration of:

- Whether the use or development will support and enhance agricultural production.
- Whether the use or development will adversely affect soil quality or permanently remove land from agricultural production.
- The potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses.
- The capacity of the site to sustain the agricultural use.
- The agricultural qualities of the land, such as soil quality, access to water and access to rural infrastructure.
- Any integrated land management plan prepared for the site.

The Decision Guidelines pertaining to the Farming Zone further detail how the proposed subdivision needs to demonstrate how it supports and enhances agricultural production and sustaining agricultural use. They also require assessment of protection of agricultural land use, compatibility with adjoining and nearby land uses and the retention of vegetation and fauna habitat.

The site and surrounding area are predominately used for agricultural purposes. While the proposed subdivision does meet the minimum lot size of 40 hectares, it is unlikely that these lot sizes can accommodate viable agriculture production and it is uncertain that the future purchasers of the properties would continue the agricultural use and production on the site.

The subdivision facilitates the fragmentation of viable farmland and is likely to lead to applications for dwellings on the subdivided lots and/or their sale to separate owners. The subdivision does not support or enhance the agricultural use of the land and is likely to lead to the permanent removal of the land from viable agricultural production and introduce potential conflicts with surrounding land uses.

The proposal is therefore inconsistent with the provisions of the Planning Scheme and the purpose of the Farming Zone.

Considerations of Gender Equality in Planning are made in relation to planning strategy, including planning scheme amendments and policy changes. Individual assessment of planning applications tend to be gender neutral, however Council officers consider factors such as community safety, privacy, and accessibility in an integrated and multi-faceted decision-making process.

Collaborative Procurement

Not applicable

Council Plan

This report has been prepared and aligned with the following strategic objectives set out in the Council Plan 2021-2025:

Strategic Objective 2: 2.1 Statutory and strategic planning for land use delivers sustainable outcomes that balance the need for growth with the enhancement of our lifestyle, character, the built and natural environment.

Council Policy

The application was subject to a Planning Consultation Meeting as there were 10 or more objections, pursuant to the Planning Permit Applications Delegation Policy 2018. In addition, the officer recommendation is for refusal, so the matter must be reported to Council.

Options

1. Adopt the Officer Recommendation.
2. Move an alternate recommendation with Council's position to be recorded as supporting the application and delegating the issue of a Notice of Decision to grant a planning permit, subject to conditions, to the General Manager Place and Community to determine conditions. This is generally consistent with the Planning Permit Applications Delegation Policy, in that if there was officer support for the proposal, the matter could be determined under delegation.

Resourcing

Financial

There are no financial implications.

Plant and equipment

Not applicable.

Human Resources

The application has been assessed by Council officers.

Risk

The risks of this proposal have been considered and given the nature of the objections, it is likely that any decision (to grant or refuse the permit) would be challenged at VCAT, either by objectors or the Applicant. These are relatively minor risks to the organisation from a liability perspective.

Economic

The permit applicant argues that the proposal would contribute to the area by facilitating individual ownership of the proposed smaller parcels of land and continue the agricultural activities currently being undertaken on the larger balance allotment that would provide opportunities for aspiring farmers and assist the current owner to recapitalise their existing holding. On the other hand, the proposal is considered by officers as likely to lead to the removal of land from productive agriculture.

Social

Officers contend that the proposal would detrimentally affect the rural character of the area.

The number of objections is significant and they raise valid concerns about impacts.

Environmental

There are no significant environmental impacts of the proposal.

Climate change

This report has been prepared and aligned with the following Climate Change function/category:

Land Use Planning: Consideration is given to climate change in the local land use planning and includes responses to direct and indirect impacts. There are no likely impacts of the proposal from or by climate change processes.

Engagement

Consultation to authorities has been undertaken in the following manner:

Referrals	Country Fire Authority (CFA) – S55 Recommending Referral – consent with no conditions (revised referral response provided)
	Dept of Transport – Conditional consent as the creation to a Road Zone Category 1 is no longer part of the application. A revised referral response is required.
	East Gippsland Water – S55 Determining referral - Conditional consent given
	AusNet (Electricity) – S55 Determining - Conditional consent given
	APA Group (Gas) – S55 Determining – No response (no services available to the area)
Internal	Technical Officer Development (Drainage, Internal Access, Erosion) - Conditional consent given Environmental Health – Consent with no conditions

Copies of external referral responses are at **Attachment 3**.

Consultation

Re-notification was undertaken in the form of letters to adjoining landowners, occupiers and previous objectors and placing of a notice in the local newspaper, in accordance with Section 52 of the *Planning and Environment Act 1987*.

Original instructions for notification of the proposal attracted six objections. The re-advertising of the amended application has attracted an additional 14 objections (Total of 20). Of the initial six objections two objectors made further comments. Copies and further details of the objections are at **Attachment 4**.

In summary the objections raised the following concerns/issues:

- Land fragmentation and loss of productive agricultural land.
- Creation of lifestyle size lots, in farming area.
- Conflict between lifestyle style lots and agricultural production on surrounding farms.
- Lots are too large for the average family to live in a rural setting and too small to farm.
- Application is inconsistent with the planning policy, Farming Zone and similar VCAT decisions.
- Lot sizes means dwellings can be create 'as of right' creating further pressure on land values and amenity conflicts.
- Erosion of environmental, economic and social well-being of local community.
- Impact to established abutting uses including Bairnsdale Airfield and Bairnsdale Field and Game Club from noise, traffic, safety and access conflicts.
- No farm management plan provided to demonstrate viability of 40 hectare lots.
- Lack of clear strategic policy relating to protecting agricultural land use. Increase in traffic impacts along Aerodrome and Comleys Road.
- Concerns over future increase in rates.
- Proposed lots front a poorly maintained gravel road.
- The East Gippsland Shire Council urgently to deliver a Rural Land Use Strategy to identify important and protected areas of agricultural production.

Attachments

1. Application Documents Link [5.3.3.1 - 1 page]
2. Detailed Assessment [5.3.3.2 - 10 pages]
3. Referral Responses [5.3.3.3 - 10 pages]
4. Objections [5.3.3.4 - 1 page]

For application documentation, refer to the advertised copy of the application listed on Council's website:

[284/2019/P - Advertised Amended Application](#)



DETAILED PLANNING REPORT

Permit Application: 284/2019/P

**705 Bengworden & 80 Comleys Road GOON NURE
CA 94 & CA 94A**

Five lot subdivision and Removal of Native Vegetation

This report has been prepared to document the statutory planning assessment pursuant to the provisions of the *Planning and Environment Act 1987* and *Local Government Act 1989*.

KEY DETAILS

Subject address	705 Bengworden & 80 Comleys Road GOON NURE CA 94 & CA 94A
Land owner	J S Patterson
Applicant	Crowther & Sadler Pty Ltd
Land area	250 hectares
Zone	FZ1
Overlays	ESO1-43, EMO, BMO, VPO1
Cultural sensitivity	The land is culturally sensitive
Site inspected	The site has been subject to several inspections by the reporting officer.
Restrictions on Title	There are no relevant restrictions on title.
The determination cannot be made under delegation for the following reasons	10 or more objections received.

PROPOSAL DETAILS/DISCUSSION

Site Analysis

The site is located 6 km south-west of Bairnsdale and 500 metres south from the Bairnsdale Airport. The land is comprised of two abutting parcels with a combined area of 250.1 hectares. An existing dwelling and associated outbuildings are located in the south-westernmost corner of the site.

The site is zoned Farming Zone – Schedule 1, part Environmental Significance Overlay – Schedule 1-43, part Vegetation Protection Overlay – Schedule 1, part Bushfire Management Overlay and part Erosion Management Overlay.

The land is relatively flat and cleared of vegetation. A patch of vegetation of 10 hectares is located to the south-eastern most corner of the land. This patch of vegetation is identified as remnant native vegetation which is part of a larger cluster existing on adjoining properties to the south.

The site is abutted on three side by roads, comprised of Comleys Road, Aerodrome Road and Bengworden Road. The last of which the only made road and is declared a road in a Road Zone, Category 1.

All three abutting roads have relatively established rows of remnant and introduced canopy trees along the road verge, or farm boundary of the subject land. Three access point exist to the site, one from each abutting road. Access is via a gravel crossover along Bengworden Road.

Background of current application

The application originally included a carriageway easement along the northern boundary of Lot 5 for access to Lot 1-4. Department of Transport (DoT) is a referral authority and their response required Lot 1 to be accessed from Comleys Road rather than Bengworden Road and for the carriageway easement to be removed.

In response to the DoT referral comments, the applicant has amended the application deleting the carriageway easement and access from the Road Zone Category 1 as required by DoT. The layout of the subdivision remains the same.

As a result of addressing DoT, Lots 1-4 are proposed to have direct access from Comleys Road and Aerodrome Road. The direct access points for Lot 3 and 4 will require native vegetation to be removed which triggers a permit that previously was avoided.

Proposal

Detailed plans and written submission in support of the application are available via the advertised application documents hyperlink in **Attachment 2**. The planning permit application seeks approval for a five-lot subdivision and removal of native vegetation.

The application proposes the following:

- Subdivision of the existing 250 hectare land into five parcels:
- Lots 1 to 4 are to be subdivided into parcels ranging from 40.02ha to 41.57ha and all of which front Comleys Road to the north.
- Lot 5 is sited along the entire southern boundary of these parcels and spans from Bengworden to Aerodrome Road with an area of 87.66ha.
- Proposed Lot 5 would contain the existing dwelling, its curtilage and the carriageway easement access from Bengworden Road for the proposed lots.
- Removal of native vegetation for Lot 3 and 4 that is required to establish the vehicle crossings.

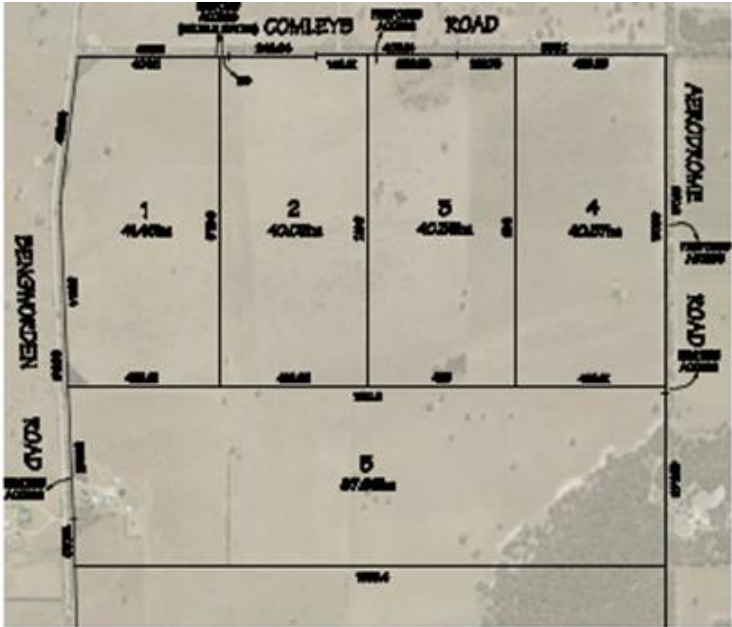


Figure 1 – Proposed Plan of Subdivision

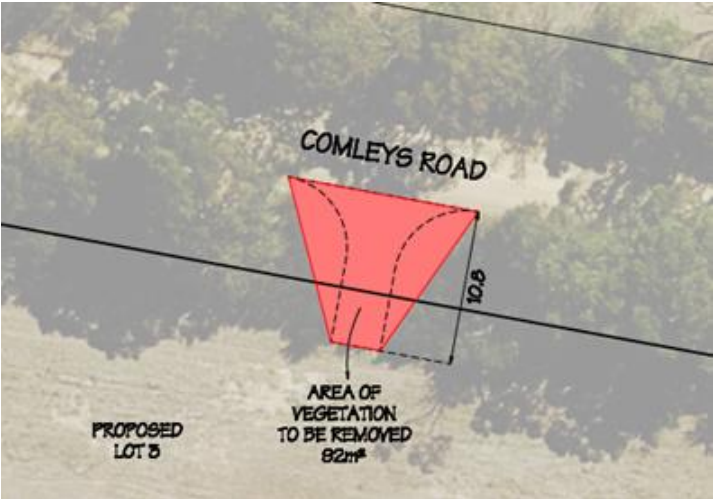


Figure 2 – Proposed area of vegetation removal on Lot 3



Figure 3 – Proposed area of vegetation removal on Lot 4

PLANNING CONTROLS		
Control	Clause(s)	Consideration
Farming Zone 1	35.07	A permit is required to subdivide land.
Bushfire Management Overlay	44.06	A permit is required to subdivide land.
Vegetation Protection Overlay 3	44.02	Permit is required for native vegetation removal.
Erosion Management Overlay	44.01	A permit is required to subdivide land, the native vegetation proposed to be removed is outside the mapped area.
Environmental Significance Overlay 1-43	42.01	A permit is required to subdivide land and removal of native vegetation.
Native Vegetation Removal	52.17	A permit is required to remove native vegetation.

Cultural sensitivity

Pursuant to the *Aboriginal Heritage Regulations 2018*, a Cultural Heritage Management Plan (CHMP) is not required as the proposal is not defined as a high impact activity.

REQUEST FOR FURTHER INFORMATION

Pursuant to Section 54 of the *Planning and Environment Act 1987*, additional information was sought by Council on 11 October 2019 during the assessment of the application.

The information sought was:

- *Justification for the subdivision in agricultural terms.*

The applicant submitted the required information on 12 November 20219 with response stating that the lots will have the minimum size to retain consistent agricultural land uses such as potential livestock keeping and other grazing activities.

REFERRAL AUTHORITIES

AUTHORITY	DET or REC	REFERRAL CLAUSE	RESPONSE
CFA	Rec (s55)	44.06 and 66.03	Consent provided with no conditions (revised referral response provided)
DoT	Det (s55)	52.29	Conditional consent as

			the creation to a Road Zone Category 1 is no longer part of the application. A revised referral response is required.
EGW	Det (s55)	66.01	Conditional consent given.
AusNet	Det (s55)	66.01	Conditional consent given.
APA Group	Det (s55)	66.01	No response (no services available to the area).

INTERNAL ADVICE

DEPARTMENT	SCOPE OF ADVICE	OUTCOME
Senior Technical Officer Development - Engineering	Drainage, Internal Access, Erosion	Conditional consent given.
Environmental Health		Consent with no conditions

PUBLIC NOTIFICATION
Advertising Required:

Re-notification was undertaken in the form of letters to adjoining landowners, occupiers and previous objectors and placing of a notice in the East Gippsland News, in accordance with Section 52 of the *Planning and Environment Act 1987*.

Original instructions for notification of the proposal attracted 6 objections. The re-advertising of the amended application has attracted an additional 14 objections (Total of 20). Of the initial six objections 2 objectors made further comments. Copies and further details of the objections are at **Attachment 4**.

In summary the objections raised the following concerns/issues:

- Land fragmentation and loss of productive agricultural land.
- Creation of lifestyle size lots, in farming area.
- Conflict between lifestyle style lots and agricultural production on surrounding farms.
- Lots are too large for the average family to live in a rural setting and too small to farm.
- Application is inconsistent with the planning policy, Farming Zone and similar VCAT decisions.
- Lot sizes means dwellings can be create 'as of right' creating further pressure on land values and amenity conflicts.
- Erosion of environmental, economic and social well-being of local community.
- Impact to established abutting uses including Bairnsdale Airfield and Bairnsdale Field and Game Club from noise, traffic, safety and access conflicts.
- No farm management plan provided to demonstrate viability of 40 hectare lots.
- Lack of clear strategic policy relating to protecting agricultural land use.
- Increase in traffic impacts along Aerodrome and Comleys Road.
- Concerns over future increase in rates.
- Proposed lots front a poorly maintained gravel road.

- The East Gippsland Shire Council urgently to deliver a Rural Land Use Strategy to identify important and protected areas of agricultural production.

REPORT – PLANNING CONSIDERATION

Planning Policy Framework (PPF)

The assessment of the application before Council requires assessment against Planning Policy Framework.

The clauses that have an influence upon the assessment of this application include:

14	Natural Resource Management
14.01-1S	Protection of agricultural land
14.01-1R	Protection of agricultural land - Gippsland
14.01-2S	Sustainable agricultural land use

Municipal Strategic Statement (MSS)

Council is required to consider Local Policy as a part of this assessment.

Local Policy clauses that are relevant include:

21.06	Natural Resource Management
21.12	Strategies for Sub-Regions, Towns and Localities

Assessment:

The policies seek to ensure the protection and support of regional agricultural farmland and encourage high value agriculture production through farm-related retailing. The importance of ensuring agricultural land is managed sustainably, while acknowledging the economic importance of agricultural production.

In this instance, the proposal has failed to take into account the strategic and physical context of the location by not appropriately facilitating the proposed subdivision in a rural living area. The proposed subdivision provides a poor outcome for agriculture and primary production and does not meet the policy objectives to protect and avoid the subdivision of productive agricultural land from diminishing the long-term productive capacity of the land.

ZONE

Farming Zone (Schedule 1)

The purpose of the zone is as follows:

- *To provide for the use of land for agriculture.*
- *To encourage the retention of productive agricultural land.*
- *To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.*
- *To encourage the retention of employment and population to support rural communities.*
- *To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.*
- *To provide for the use and development of land for the specific purposes identified in a schedule to this zone.*

Assessment:

Pursuant to 35.07-3 of the FZ1, a permit is required to subdivide land. Each lot must be at least the area specified for the land in a schedule to this zone. Pursuant to Section 1.0 to the Schedule of the FZ1, a minimum lot size of 40 hectares is specified. Lots 1 to 4 are to be subdivided into parcels ranging from 40.31ha to 41.17ha and Lot 5 is to be subdivided with an area of 87.66ha.

The Decision Guidelines require the consideration of:

- Whether the use or development will support and enhance agricultural production.
- Whether the use or development will adversely affect soil quality or permanently remove land from agricultural production.
- The potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses.
- The capacity of the site to sustain the agricultural use.
- The agricultural qualities of the land, such as soil quality, access to water and access to rural infrastructure.
- Any integrated land management plan prepared for the site.

The Decision Guidelines pertaining to the Farming Zone further detail how the proposed subdivision needs to demonstrate how it supports and enhances agricultural production and sustaining agricultural use. They also require assessment of protection of agricultural land use, compatibility with adjoining and nearby land uses and the retention of vegetation and fauna habitat.

The site and surrounding area are predominately used for agricultural purposes.

In principle, the proposed five lot subdivision does meet the minimum lot size of 40 hectares, however, it is questionable whether these lot sizes can accommodate effective agriculture production and it is uncertain that the future purchasers of the properties will continue the agricultural use and production on the site.

OVERLAY

Environmental Significance Overlay 1-43 (ESO)

The purpose of the overlay is as follows:

- *To identify areas where the development of land may be affected by environmental constraints.*
- *To ensure that development is compatible with identified environmental values.*

This overlay seeks to protect vegetation which includes:

- Wildlife Corridor.
- Gippsland Plains Grassy Woodland.

Assessment:

Pursuant to Clause 42.01-2 of the ESO, a permit is required to subdivide land and remove native vegetation.

The Decision Guidelines require the consideration of:

- *The statement of environmental significance and the environmental objective contained in a schedule to this overlay.*
- *The need to remove, destroy or lop vegetation to create a defensible space to reduce the risk of bushfire to life and property.*

Schedule ESO1-43 of the East Gippsland Planning Scheme identifies a Vegetation Corridor and the Gippsland Plains Grassy Woodland along Comleys Road and Aerodrome Road, both of which abuts the subject land. Management practices outlined in the Schedule can be implemented along the northern and eastern boundaries of the property, as contained within ESO 1-43.

The proposal would not cause substantial environmental impacts as it minimises the removal of native vegetation as a result of the subdivision to a small portion along the road reservation. Avoiding the removal of native vegetation has been possible except for Lots 3 and 4. The location of the crossover for lot 3 and 4 have are proposed to further minimise removal of vegetation.

Erosion Management Overlay (EMO)

The purpose of the overlay is as follows:

- *To protect areas prone to erosion, landslip or other land degradation processes, by minimising land disturbance and inappropriate development.*

Assessment:

Pursuant to Clause 44.01-5 of the EMO, a permit is required to subdivide land.

The Decision Guidelines require the consideration of:

- *The risk to life, property and community infrastructure from geotechnical hazard.*
- *The recommendations of any geotechnical risk assessment and application documentation.*
- *The recommendations of any independent review of the geotechnical risk assessment and application documentation.*
- *The need for any ongoing geotechnical risk management measures.*

Two of the five proposed subdivided lots will be located within the EMO. There is no need for a Geotechnical Risk Assessment as there is no buildings or works associated with a development of accommodation or vegetation removal that would undermine the erosion risk of the soil.

Bushfire Management Overlay (BMO)

The purpose of the overlay is as follows:

- *To ensure that the development of land prioritises the protection of human life and strengthens community resilience to bushfire.*
- *To identify areas where the bushfire hazard warrants bushfire protection measures to be implemented.*
- *To ensure development is only permitted where the risk to life and property from bushfire can be reduced to an acceptable level.*

Assessment:

Pursuant to Clause 44.06-2 of the BMO, a permit is required to subdivide land.

Each proposed lot is predominantly cleared of vegetation, with grassy coverage for grazing of agriculture remaining on the land's surface, with no development proposed within the Bushfire Management Overlay encumbered area.

The proposal does not seek approval for any buildings or works associated with development of accommodation. It is therefore deemed appropriate to consider that, due to there being no significant change to the subject land itself, there is no increase in risk to human life or property resulting from the proposed subdivision.

Vegetation Protection Overlay (VPO)

The purposes of the overlay are as follows:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To protect areas of significant vegetation.*
- *To ensure that development minimises loss of vegetation.*
- *To preserve existing trees and other vegetation.*
- *To recognise vegetation protection areas as locations of special significance, natural beauty, interest and importance.*
- *To maintain and enhance habitat and habitat corridors for indigenous fauna.*
- *To encourage the regeneration of native vegetation.*

Assessment:

The site is located within Schedule 1 of the overlay which is part of the Tambo-Bairnsdale Roadside Vegetation Protection Network which identifies remnant roadside vegetation as important flora and fauna habitat.

The proposal has attempted to minimise the removal of the roadside vegetation to a small portion along Lot 3 and 4. The location of the crossover for lot 3 and 4 have are proposed to further minimise removal of vegetation in locations where the vegetation is less dense.

As required, pursuant to 44.06-6, a referral under Section 55 of the *Planning & Environment Act 1987* was made to the Country Fire Authority as a recommending referral authority, who consented to the proposal with no conditions.

PARTICULAR PROVISIONSNative Vegetation - Clause 52.17

The purpose of this provision is as follows:

- *To ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation. This is achieved by applying the following three step approach in accordance with the Guidelines for the removal, destruction or lopping of native vegetation (Department of Environment, Land, Water and Planning, 2017) (the Guidelines):*
 1. *Avoid the removal, destruction or lopping of native vegetation.*
 2. *Minimise impacts from the removal, destruction or lopping of native vegetation that cannot be avoided.*
 3. *Provide an offset to compensate for the biodiversity impact if a permit is granted to remove, destroy or lop native vegetation.*
 - *To manage the removal, destruction or lopping of native vegetation to minimise land and water degradation.*

Assessment:

The applicant has provided the required information in accordance with the purpose of the provision. The vegetation proposed to be removed has been assessed as within an Intermediate Assessment Pathway. A vegetation offset report has been submitted and no trees are being removed.

GENERAL PROVISIONS

Clause 65 - Decision Guidelines

The Decision Guidelines of Clause 65 of the East Gippsland Planning Scheme are relevant to this application and require consideration to be given to a variety of matters including planning scheme policies, the purpose of the zone, orderly planning and the impact on amenity.

The application presents the potential for the loss of productive agricultural land. The development of the land for additional lots will most likely result in a decrease of productive agricultural land. The proposal may meet the area specified of a minimum 40 hectares but the proposal is not an acceptable planning outcome and is inconsistent with the objectives of planning in Victoria.

Patron: Her Excellency the Honourable Linda Dessau AC, Governor of Victoria

CFA Fire Safety
Fire & Emergency Management
Email: firesafetyreferrals@cfa.vic.gov.au
Telephone: 03 9262 8578



Our Ref: 11000-67851-94701
Council Ref: 284/2019/P

31 October 2019

Martin Ireland
East Gippsland Shire Council
P. O. Box 1618
BAIRNSDALE VIC 3875

Dear Martin

CONDITIONAL CONSENT TO THE GRANT OF A PERMIT

Application No: 284/2019/P
Site address: 705 Bengworden & 80 Comleys Road Goon Nure
Proposal: Five lot subdivision, creation of an easement and creation of access to a road in RDZ1

I refer to correspondence received on 14 October 2019 seeking comments on the above application.

CFA acting as a Referral Authority pursuant to section 55 of the *Planning and Environment Act, 1987* (**Act**) has considered and does not object to the grant of a permit for the above proposal.

CFA has no conditions

Further comments

CFA has not requested that the nominal building envelope and bushfire mitigation measures for each proposed lot be formally implemented through an agreement made under Section 173 of the Act as:

- The proposed dwelling site for each lot is located outside the Bushfire Management Overlay (BMO) in a lower bushfire risk area; and
- Any future planning application to construct a dwelling within the area of the Bushfire Management Overlay on the proposed lots to be created will need to demonstrate compliance with the provisions of the BMO.

Certification and Statement of Compliance

CFA consents under Section 9 of the *Subdivision Act 1988* to the Certification of the Plan of Subdivision. CFA does not want the Plan of Subdivision for this planning permit application referred under Section 8 of the *Subdivision Act 1988*.

Protecting lives and property

cfa.vic.gov.au

CFA also consents to the Statement of Compliance for Subdivision under the *Subdivision Act 1988*.

If you wish to discuss this matter in more detail, please do not hesitate to contact the Fire Safety Team on 03 9262 8578.

Yours Sincerely



Peter Rogasch,
Fire Safety Officer
Fire Prevention & Preparedness
Country Fire Authority

cc: Crowther & Sadler Pty Ltd
contact@crowthersadler.com.au

[Type text]



Our patron, Her Excellency the Honourable Linda Dessau AC, Governor of Victoria

CFA Community Preparedness
8 Lakeside Drive Burwood East Vic 3151
Email: firesafetyreferrals@cfa.vic.gov.au

CFA Ref: 11000-67851-113616
Council Ref: 284/2019/P

20 October 2021

Emine Mestan
East Gippsland Shire Council
PO BOX 1618
BAIRNSDALE VIC 3875

Dear Emine,

CONSENT TO THE GRANT OF A PERMIT

Application No: 284/2019/P
Site Address: 705 & 80 Bengworden & Comleys Road Goon Nure
Proposal: Five lot subdivision, creation of an easement and creation of access to a road in RDZ1

I refer to correspondence received on 04 October 2021 seeking comments on the above application.

CFA acting as a Referral Authority pursuant to Section 55 of the *Planning and Environment Act, 1987 (Act)* has considered and does not object to the grant of a permit for the above proposal.

CFA has no conditions

Further comments

CFA has not requested that the nominal building envelope or bushfire mitigation measures for each proposed lot be formally implemented through an agreement made under Section 173 of the Act as:

- The proposed dwelling site for each lot is located outside the Bushfire Management Overlay (BMO) and in a lower bushfire risk area; and
- Any future planning application to construct a dwelling within the area of the Bushfire Management Overlay on the proposed lots to be created will need to demonstrate compliance with the provisions of the BMO.

Certification and Statement of Compliance

CFA consents under Section 9 of the *Subdivision Act 1988* to the Certification of the Plan of Subdivision. CFA does not want the Plan of Subdivision for this planning permit application referred under Section 8 of the *Subdivision Act 1988*.

CFA also consents to the Statement of Compliance for Subdivision under the *Subdivision Act 1988*.

If you wish to discuss this matter in more detail, please do not hesitate to contact the Peter Rogasch on 0437 012 114.

Yours sincerely



Justin Meli
Bushfire Planning Coordinator
Community Preparedness

cc: Crowther & Sadler Pty Ltd
contact@crowthersadler.com.au



Department of Transport

GPO Box 2392
Melbourne, VIC 3001 Australia
Telephone: +61 3 9651 9999
www.transport.vic.gov.au
DX 201292

East Gippsland Shire Council
273 Main Street
Bairnsdale VIC 3875
Attention: Martin Ireland

Dear Mr Ireland

PLANNING APPLICATION NO.: 284/2019/P
DoT REFERENCE NO: PPR 31035/19
PROPERTY ADDRESS: 705 BENGWORDEN ROAD, GOON NURE VIC 3875

Section 55 – No objection subject to conditions

Thank you for your letter dated 14 October 2019 referring details of the above application to the Department of Transport (Head, Transport for Victoria) pursuant to Section 55 of the *Planning and Environment Act 1987*.

The application is for Five lot subdivision, creation of an easement and creation of access to a road in RDZ1.

If Council regards the proposed development favourably, the Department would require that the following conditions be included in any Notice of Decision to issue a Planning Permit or Planning Permit:

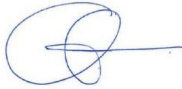
- 1. Access to Lots 1 must be from Comleys Road.**
- 2. The carriageway easement that provides access to Bengworden Road will not be permitted. The existing access onto Bengworden Road from the proposed carriageway easement must be removed and refenced prior to the statement of compliance.**
- 3. Prior to the certification of the plan of sub division, the carriageway easement connection to Bengworden Road must be removed.**

Once Council makes its decision, please forward a copy of the decision to the Department as required under Section 66 of the *Planning and Environment Act 1987*.



Should you have any enquiries regarding this matter, please contact Chris Padovan on 5172-2627 or chris.padovan@roads.vic.gov.au.

Yours sincerely

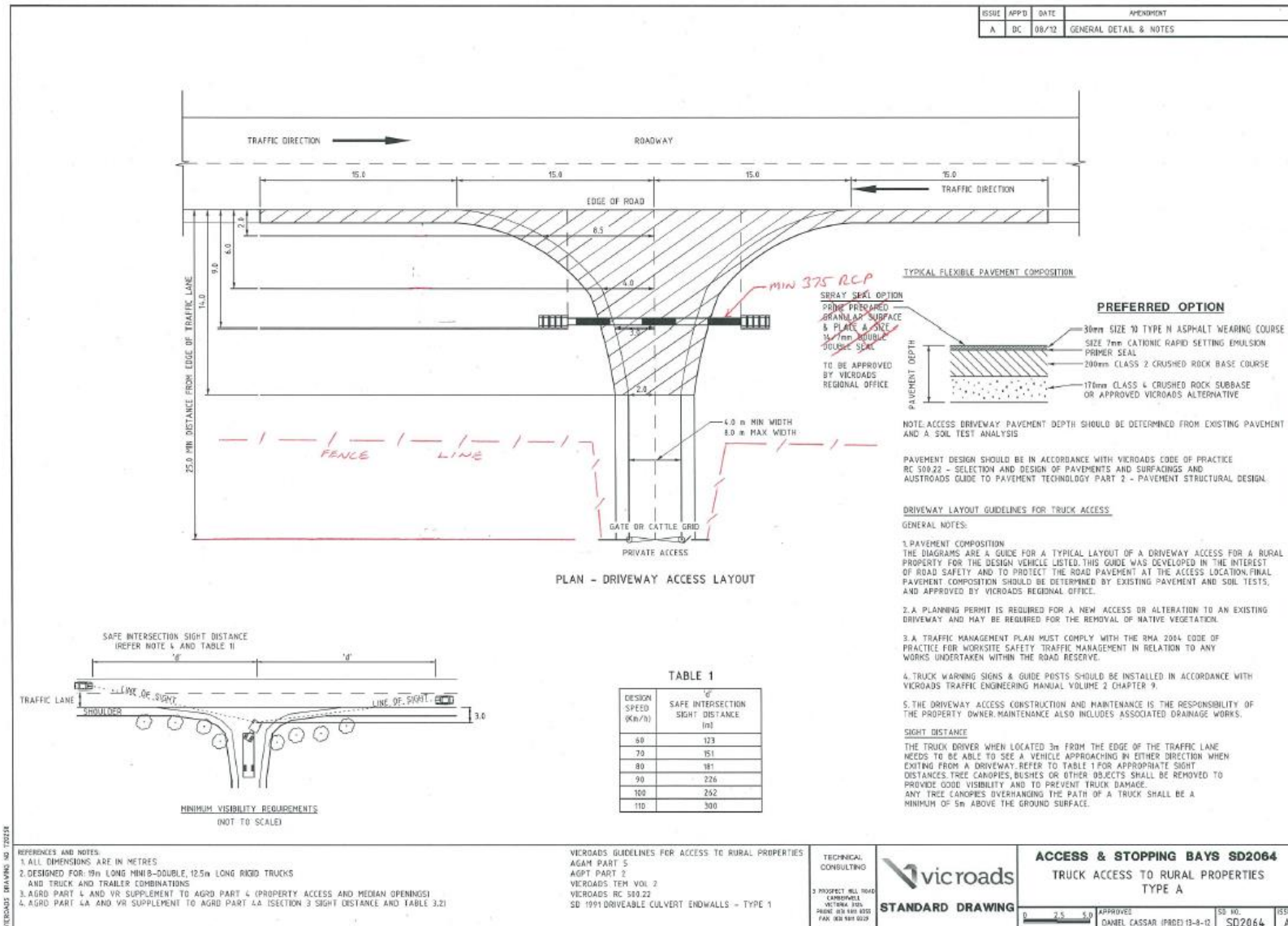
A handwritten signature in blue ink, consisting of a stylized 'C' followed by a horizontal line and a small flourish.

Chris Padovan

TEAM LEADER – INTEGRATED TRANSPORT & LAND USE

cc Permit Applicant

15 January 2020





133 Macleod Street, PO Box 52, Bairnsdale Victoria 3875
Tel: (03) 5150 4444 **Fax:** (03) 5150 4477
Email: egw@egwater.vic.gov.au **Web:** www.egwater.vic.gov.au

Our Ref: DOC/21/56007

14 October 2021

Reference Number(s): 284/2019/P
Referral Authority: East Gippsland Shire Council
For: 5 Lot Subdivision
Location: 705 Bengworden & 80 Comleys Road Goon Nure
Applicant: Crowther & Sadler Pty Ltd

In response to the above application, East Gippsland Water does not have any requirements at this location and does not object to a permit being granted.

Further enquiries may be directed to Rod Poynton (5150 4476) at our Bairnsdale Office.

Yours faithfully,

A handwritten signature in black ink, appearing to read "A Kelly".

ADRIAN J KELLY
ACTING EXECUTIVE MANAGER, STRATEGY & ASSETS

cc: Crowther & Sadler Pty Ltd



18/11/2021

dwa6CEA.htm

From: Subdivisions [Subdivisions@ausnetservices.com.au]
Sent: Tuesday, 5 October 2021 11:18:08 AM
To: Planning Unit Administration
Subject: RE: 284/2019/P - 705 Bengworden & 80 Comleys Road GOON NURE

Our Ref 75077936

E: Good morning,
 a:

Please find below AusNet Services response to the planning referral.

CONDITIONAL CONSENT TO ISSUE OF PERMIT

AusNet Electricity Services Pty Ltd does not object to the issue of a planning permit in respect of the abovementioned application if the permit is subject to the following conditions:

CONDITIONS REQUIRED BY AUSNET ELECTRICITY SERVICES PTY LTD

The plan of subdivision submitted for certification must be referred to AusNet Electricity Services Pty Ltd in accordance with Section 8 of the subdivision Act 1988.

The applicant must –

- Enter in an agreement with AusNet Electricity Services Pty Ltd for supply of electricity to each lot on the endorsed plan.
- Enter into an agreement with AusNet Electricity Services Pty Ltd for the rearrangement of the existing electricity supply system.
- Enter into an agreement with AusNet Electricity Services Pty Ltd for rearrangement of the points of supply to any existing installations affected by any private electric power line which would cross a boundary created by the subdivision, or by such means as may be agreed by AusNet Electricity Services Pty Ltd.
- Provide easements satisfactory to AusNet Electricity Services Pty Ltd for the purpose of "Power Line" in the favour of "AusNet Electricity Services Pty Ltd" pursuant to Section 88 of the Electricity Industry Act 2000, where easements have not been otherwise provided, for all existing AusNet Electricity Services Pty Ltd electric power lines and for any new power lines required to service the lots on the endorsed plan and/or abutting land.
- Obtain for the use of AusNet Electricity Services Pty Ltd any other easement required to service the lots.
- Adjust the position of any existing AusNet Electricity Services Pty Ltd easement to accord with the position of the electricity line(s) as determined by survey.
- Provide to AusNet Electricity Services Pty Ltd a copy of the plan of subdivision submitted for certification that shows any amendments that have been required.

END OF CONDITIONS

It is recommended that, at an early date the applicant commences negotiations with AusNet Electricity Services Pty Ltd for a supply of electricity in order that supply arrangements can be worked out in detail, so prescribed information can be issued without delay (the release to the municipality enabling a Statement of Compliance with the conditions to be issued).

Arrangements for the supply will be subject to obtaining the agreement of other Authorities and any landowners affected by routes of the electric power lines required to supply the lots and for any tree clearing.

Prospective purchasers of lots on this plan should contact this office to determine the availability of a supply of electricity. Financial contributions may be required.

18/11/2021

dwa6CEA.htm

Yours sincerely,

**Daryl Kelly
Customer Connect
AusNet Services**

file:///C:/DAT

Planning Application 284/2019/P – For Refusal - Five lot subdivision, removal of native vegetation, and subdivision adjacent to a road in RDZ1 at 705 Bengworden and 80 Comleys Road Goon Nure

[Objections](#)

5.3.4 Request to end (in principle support) legal agreements 31 May Park Drive, Paynesville and 40 Koraleigh View, Nicholson

Authorised by General Manager Place and Community

Conflict of Interest

Officers preparing this report have no conflict of interest to declare.

Executive Summary

The purpose of this report is to seek Council's in-principle support for landowners' requests to end two Section 173 Agreements (Agreement) for properties in Paynesville and Nicholson. This will allow for the implementation of stage two of the process to end the Agreements which will involve community consultation and further reports to Council in order to determine the proposals.

The catalyst to end the Agreement AB705662R as it relates to 31 May Park Drive, Paynesville is the application for Planning Permit 562/2021/P for a two-lot subdivision. A request to end the Agreement and the relevant title documents, including the Agreement, can be found at **Attachment 1**.

The catalyst to end the Agreement AL961631J as it relates to 40 Koraleigh View, Nicholson is the owner would like to develop an outbuilding (shed) outside an existing building envelope in accordance with the approved Cultural Heritage Management Plan. A request to end the Agreement and the relevant title documents, including the Agreement, can be found at **Attachment 2**.

Both requests are suitable to be progressed to notification, which allows for stakeholder submissions. As such, it is recommended that both requests are supported in principle, and thereafter are subject to notification and final consideration by Council.

Officer Recommendation

That Council:

- 1. receives and notes this report and all attachments pertaining to this report;***
- 2. agrees in-principle to the ending of Section 173 Agreement AB705662R wholly as it relates to Lot 19 on plan of subdivision PS506645 at 31 May Park Drive, Paynesville in accordance with Section 178A of the Planning and Environment Act 1987;***
- 3. agrees in-principle to the ending of Section 173 Agreement AL961631J wholly as it relates to Lot 15 on plan of subdivision 722623L at 40 Koraleigh View, Nicholson in accordance with Section 178A of the Planning and Environment Act 1987; and***
- 4. determines to undertake the necessary public notice of the proposals in accordance with Section 178C of the Planning and Environment Act 1987 before the matters are brought back to Council for determination.***

Background

AB705662R – 31 May Park Drive, Paynesville

Council has received a request to end Agreement AB705662R (**Attachment 1**) wholly as it relates to Lot 19 on plan of subdivision PS506645 at 31 May Park Drive, Paynesville. Planning permit application 562/2021/P for a two-lot subdivision of this lot is currently under consideration. The Agreement was entered into in accordance with conditions of Planning Permit 01/0053536/DS, for a 29-lot subdivision. The purpose of the Agreement was to ensure the planning permit conditions were fulfilled on the subject land, specifically to ensure a consistent lot layout and for provision of services in the precinct, which at the time was the growth area for Paynesville.



Figure 1 – Proposed Plan of Subdivision – 31 May Park Drive, Paynesville

The proposed plan of subdivision (**Figure 1**) responds to the provisions of the General Residential Zone, Schedule 1 and the Design and Development Overlay, Schedule 14 of the East Gippsland Planning Scheme.

Officers consider that the request to end the Agreement is reasonable, as the area has developed fully and is now considered suitable for infill subdivision.

AL961631J – 40 Koraleigh View, Nicholson

Council has received a request to end Agreement AL961631J (**Attachment 2**) wholly as it relates to Lot 15 on plan of subdivision 722623L at 40 Koraleigh View, Nicholson. A planning permit application 107/2021/VIC was received for Buildings and Works for an Outbuilding. A permit was assessed as being “not required”, based on interpretation of the provision of the Erosion Management Overlay.

The proposed shed for which the application was made would be outside an existing building envelope but is not within an area of restriction outlined in the Cultural Heritage Management Plan endorsed for the subdivision. The purpose of the Agreement was to ensure any buildings erected on the subject land were constructed within the Building Envelope as shown on the plan endorsed as part of the permit. The envelopes established for Lot 15 are shown in **Figure 2**.

Section 173 agreement AL961631J provides the following specific obligations on the landowner(s):

SPECIFIC OBLIGATIONS OF THE OWNER

6.5 building envelopes

The Owner must not build, construct or erect or cause or permit to be built, constructed or erected any Building outside a Building and Waste Disposal Envelope.

Council officers have previously been asked for advice regarding the ability of officers to provide consent for building outside of a nominated building envelope on other land within this development. The Agreement does not provide for a “miscellaneous consent” process, and as such a formal request to amend or end the Agreement is required. No other individuals have made a request and have instead modified their proposals to comply with the existing Agreement. Some of these individual landowners may be aggrieved by the request since they were advised it would not be supported by officers.

The applicants contend that the endorsed building envelope plan is unsuitable given the amount of land area not restricted by the Cultural Heritage Management Plan, and the small size of the existing building envelope.



Figure 2 - Endorsed building envelope (blue) and cultural heritage restriction (red) plan related to the subject land.

The building envelope was nominated on the land at 140 Nicholson-Sarsfield Road, Nicholson. The subdivision plan was approved in response to the provisions of the Low Density Residential Zone of the East Gippsland Planning Scheme. The provisions of the Low Density Residential Zone do not require the Building Envelope to be registered on title under an Agreement, however the Agreement was established to satisfy the approved Cultural Heritage Management Plan.

The proposal would provide a new agreement that would be specific to 40 Koraleigh View, Nicholson. New wording would allow the Responsible Authority to authorise construction of the shed outside of the building envelope via miscellaneous consent. The views of affected parties in relation to the miscellaneous consent could be taken into account via informal notice, which could be carried out concurrently with the formal notification process to prevent duplication and delay. There would still be a need to comply with the approved Cultural Heritage Management Plan in any miscellaneous approval.

Proposed Section 173 agreement:

SPECIFIC OBLIGATIONS OF THE OWNER

6.5 Building envelopes

Unless with Council's prior written consent, the Owner must not build, construct or erect or cause or permit to be built, constructed or erected any Building outside a Building and Waste Disposal Envelope.

The proposed wording above introduces the ability for miscellaneous consent. Any other affected owner would need to make a similar application to end their Agreement for this wording to apply.

On this basis, officers consider that the request to end the Agreement is reasonable and the processing of a revised Agreement would come after this consideration is finalised. A new Agreement would need to be executed prior to or concurrently with the ending of the current Agreement.

Legislation

The implications of this report have been assessed and are not considered likely to breach or infringe upon the human rights detailed in the Victorian Government's Charter of *Human Rights and Responsibilities Act 2006*.

The *Planning and Environment Act 1987* pursuant to section 178A provides the opportunity for Council to consider ending an Agreement, either wholly or in part, without the consent of all persons who are bound by the Agreement.

The applicants are seeking to end Agreements, however, the consent of all parties bound by each of the Agreements has not been obtained.

In some instances, such as the case at hand, it is not always reasonable nor practical to obtain the consent of all parties to an Agreement, particularly where there are a significant number of parties.

Where the consent of all parties has not been obtained, section 178B(2) of the *Planning and Environment Act 1987* provides the framework for the proposal to be assessed and considered by Council.

Council Plan

This report has been prepared and aligned with the following strategic objectives set out in the Council Plan 2021-2025:

Strategic Objective 2: 2.1 Statutory and strategic planning for land use delivers sustainable outcomes that balance the need for growth with the enhancement of our lifestyle, character, the built and natural environment.

Council Policy

There is no specific Council policy established for consideration of these matters.

Options

For 31 May Park Drive, Paynesville, not giving in principle support would potentially prevent further action on the subdivision. It is considered reasonable to give support, allowing for consideration of affected landowners.

For 40 Koraleigh View, Nicholson, not giving in principle support would prevent the development of the proposed outbuilding. It is noted that in the past other landowners have been advised they would not receive support from Officers to end the same agreement as it relates to other lots. Many lots in the subdivision have larger building envelopes which allow greater flexibility for siting of buildings. It is expected that some criticism will be made of that advice, however this should not prevent the process of giving in principle support to allow for the affected landowners to provide comment.

As such, the officer recommendation is to process the requests and give notice of the proposals before further reporting will outline any responses received.

Resourcing

Financial

Notification of the proposal is required, which is included in the application fees.

Plant and equipment

Nil

Human Resources

Assessment is by planning department officers.

Risk

The risks of this proposal have been considered and there is relatively low risk in the determinations as recommended, as there are further determinations required after notification is given.

Economic

The proposals may facilitate additional or alternative development/subdivision.

Social

The procedure to assess proposals to end section 173 Agreements under section 178A of the *Planning and Environment Act 1987* directs that notice of the proposal to all parties bound by the Agreement is undertaken after obtaining 'in principle' support.

Notice for each proposal will take place in the form of direct mail to all persons who own land that has the same Agreement included on their title.

Gender Impact Statement

Considerations of Gender Equality in Planning are made in relation to planning strategy, including planning scheme amendments and policy changes. Individual assessment of planning applications tends to be gender neutral; however, Council officers consider factors such as community safety, privacy, and accessibility in an integrated and multi-faceted decision-making process.

Environmental

The proposals will not have any significant environmental impacts.

Climate change

This report has been prepared and aligned with the following Climate Change function/category:

Land Use Planning: Consideration is given to climate change in the local land use planning and includes responses to direct and indirect impacts.

Engagement

The procedure to assess proposals to end Section 173 Agreements under section 178A of the *Planning and Environment Act 1987* directs that notice of the proposal to all parties bound by the Agreement is undertaken after obtaining 'in principle' support.

Notice for each proposal will take place in the form of direct mail to all persons who own land that has the same Agreement included on their title.

Attachments

1. Request to end Agreement 31 May Park Drive, Paynesville [5.3.4.1 - 38 pages]
2. Request to end Agreement 40 Koraleigh View, Nicholson [5.3.4.2 - 62 pages]

Our ref: 19770

16 November 2021

Statutory Planning Coordinator
East Gippsland Shire Council
Via Email: planning@egipps.vic.gov.au

Attention: Mr. Robert Pringle

Dear Robert,

**Re: Request to end Legal Agreement AB705662R
Lot 19 PS506645
31 May Park Drive, Paynesville**

We refer to our recent two lot subdivision planning application on the abovementioned land which was lodged with Council and respectfully request Council's consent to the ending of Legal Agreement AB705662R as currently registered on title.

Purpose for Removal and Background

The purpose in part of the Agreement was to ensure that the former land parcel was developed in accordance with planning permit 01/00536/DS.

It would appear that this precinct was a growth area of Paynesville at the time the permit was issued and there were concerns as to whether services and infrastructure would be able to appropriately service the precinct. It would also appear that there were concerns that the precinct may not develop in a logical manner and as such this resulted in the requirement for the subdivision layout to be placed in a legal agreement to achieve a logical extension of the urban area with lots connected to services and infrastructure.

The subdivision layout endorsed in accordance with Conditions 1 and 2 as part of Planning Permit 01/00536/DS continued to apply by virtue of Agreement AB705662R including the subdivision plan, being registered on title to the subject land.

152 Macleod St.
PO Box 722,
Bairnsdale, VIC 3875

P: 5152 5011
F: 5152 5705

E: contact@crowthersadler.com.au



Extract of Plan referenced within the Agreement

We believe that the Legal Agreement should be ended as the precinct is developed, services have been provided and the agreement is no longer consistent with state and local policy that seeks to promote infill development in existing serviced and zoned land within settlements.

A planning permit application for a two lot subdivision of lot 19 has been concurrently lodged with this proposal to end Section 173 Legal Agreement AB705662R.



The Proposal

Our proposal to end the Agreement as it applies to the subject land has been made pursuant to Section 178A(1)(b) of the *Planning & Environment Act 1987*.

Section 178A(2)(b) requires the application to be “*accompanied by the information required by the regulations*”. In accordance with the requirements of Regulation 55 of the *Planning & Environment Regulations 2015* we provide the following requisite information:

Regulation 55(a) - we confirm the applicant for the request to end the Agreement is Mr. Jelle Burggraaff, C/- Crowther & Sadler Pty. Ltd of 152 Macleod Street, Bairnsdale, Victoria, 3875. Phone number for the Applicant is 5152 5011.

Regulation 55(b) – the Agreement AB705662R is to be ended as it applies to 31 May Park Drive, Paynesville, formally described as Lot 19 on PS506645.

Regulation 55(c) - not applicable as the proposal does not seek to amend the Agreement.

Regulation 55(d)(i) – not applicable to the proposal does not seek to end the Agreement in part.

Regulation 55(d)(ii) – the proposal seeks to end the Agreement as applying to part of the land. The Agreement is to be ended as it applies to 31 May Park Drive, Paynesville, formally described as Lot 19 on PS506645.

Regulation 55(d)(iii) – the Agreement is an unnecessary restriction on the land and does not reflect current state and local planning policy and will be at conflict with our Client’s desire to undertake two lot subdivision in accordance with the provisions of the East Gippsland Planning Scheme.

To assist with Council's consideration of our request in accordance with Section 178(B)(2) of the Act, we are pleased to provide the following information.

Purpose of the Agreement

The purpose of the Agreement was to ensure the growth front of Paynesville was undertaken in a logical and planned manner. It is noted that the subdivision is fully complete and the growth front has continued to develop further westwards of the subdivision.

Why the Agreement is no longer required

The agreement at Clause 3 *specific obligations of the owner*, is no longer required as it relates to 31 May Park Drive, Paynesville, formally described as Lot 19 on PS506645 because the subdivision is complete and it does not accurately reflect today's current state and local planning policy which seeks to facilitate infill development of appropriately zoned and serviced residential land within an urban settlement.

The Agreement is considered to impose an unreasonable limitation on the land that is inconsistent with the provisions of the East Gippsland Planning Scheme. It is therefore appropriate that it be ended.

Whether the ending of the agreement would disadvantage any person, whether or not a party to the agreement

The ending of the Agreement will not give rise to any form of disadvantage to any other person.

The ending of the Agreement will simply enable future subdivision to occur on the subject land consistent with the provisions of the General Residential Zone as currently applying.

The proposed subdivision will be required to proceed through the planning process and obtain a planning permit.

The reasons why the responsible authority entered into the agreement

The Agreement was appropriately entered into by Council at the time in accordance with conditions on Planning Permit 01/00536/DS.

Any relevant permit or other requirements the land is subject to under the Subdivision Act 1988

None applicable.

Any other prescribed matter

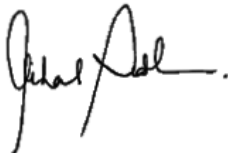
We are not aware of any other prescribed matter which is relevant to the request to end the Agreement as it applies to the subject land.

Section 178A(2)(c) of the Act requires an application of this type to be accompanied by the requisite fee as prescribed by the *Planning & Environment (Fees) Regulations 2016*.

Payment to the *East Gippsland Shire Council* in the amount of \$668.84 (Regulation 16) has been made to facilitate the processing of this request.

We trust this information provides sufficient detail to facilitate Council's commencement of the process associated with the ending of the Agreement as it applies to the subject land. We respectfully await Council's timely advice regarding the scheduling of this matter on the next available Ordinary Council Meeting agenda.

Regards,



MICHAEL SADLER
Managing Director

*Encl. Copy of Title (Lot 19 PS506645)
S173LA AB705662R
Required fee of \$668.84*



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The Victorian Government acknowledges the Traditional Owners of Victoria and pays respects to their ongoing connection to their Country, History and Culture. The Victorian Government extends this respect to their Elders, past, present and emerging.

REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958

Page 1 of 1

VOLUME 10784 FOLIO 394

Security no : 124093762999A

Produced 16/11/2021 12:43 PM

LAND DESCRIPTION

Lot 19 on Plan of Subdivision 506645G.
PARENT TITLE Volume 10684 Folio 290
Created by instrument PS506645G 20/02/2004

REGISTERED PROPRIETOR

Estate Fee Simple
Sole Proprietor
JELLE BURGGRAFF of 155 LAKE VICTORIA ROAD EAGLE POINT VIC 3878
AQ846215Y 22/03/2018

ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE AT501817T 10/08/2020
AUSTRALIA AND NEW ZEALAND BANKING GROUP LTD

COVENANT AC880084Q 25/05/2004

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

AGREEMENT Section 173 PLANNING AND ENVIRONMENT ACT 1987
R333799X 10/05/1991

AGREEMENT Section 173 Planning and Environment Act 1987
AB705662R 20/11/2002

DIAGRAM LOCATION

SEE PS506645G FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 31 MAY PARK DRIVE PAYNESVILLE VIC 3880

ADMINISTRATIVE NOTICES

NIL

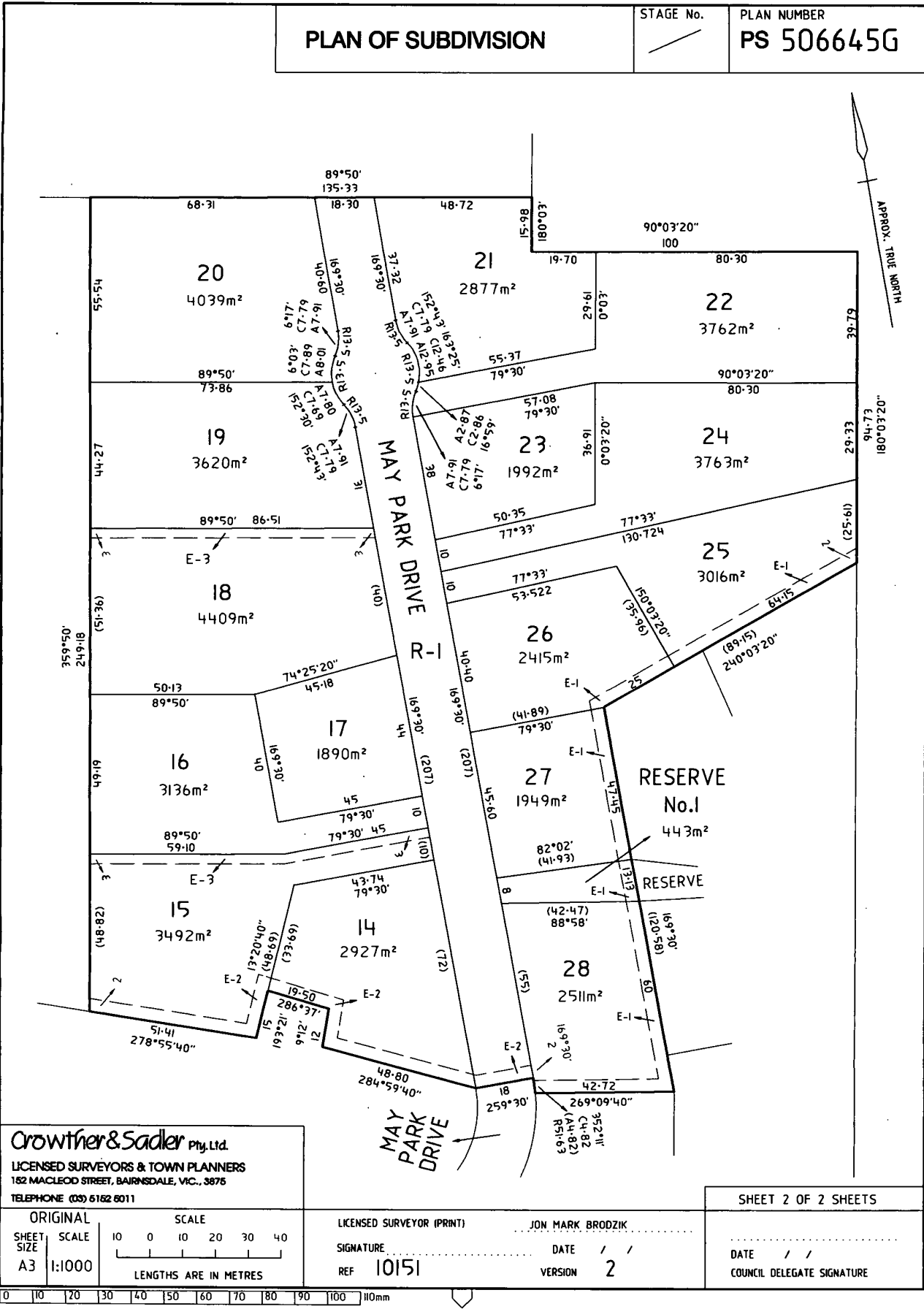
eCT Control 16165A AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED
Effective from 10/08/2020

DOCUMENT END

Title 10784/394

Page 1 of 1

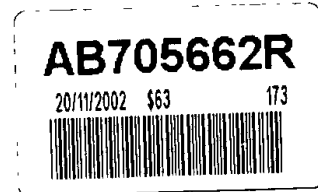
PLAN OF SUBDIVISION		STAGE No. <hr/>	LTO USE ONLY EDITION 1	PLAN NUMBER PS 506645G
LOCATION OF LAND PARISH: BAIRNSDALE TOWNSHIP: — SECTION: — CROWN ALLOTMENT: 141 (PART) CROWN PORTION: — LTO BASE RECORD: VICMAP DIGITAL PROPERTY (RURAL) TITLE REFERENCES: VOL 10684 FOL 290 LAST PLAN REFERENCE: LOT 2 ON PS 506641Q POSTAL ADDRESS: MAY PARK DRIVE, (At time of subdivision) PAYNESVILLE, 3880 AMG CO-ORDINATES: E 562 500 N 5803 650 ZONE: 55 (Of approx. centre of land in plan)		COUNCIL CERTIFICATION AND ENDORSEMENT COUNCIL NAME: EAST GIPPSLAND SHIRE COUNCIL REF: 02/00051/SD 1. This plan is certified under Section 6 of the Subdivision Act 1988. 2. This plan is certified under Section 11(7) of the Subdivision Act 1988. Date of original certification under Section 6 8 / 7 / 2 3. This is a statement of compliance issued under Section 21 of the Subdivision Act 1988. OPEN SPACE (i) A requirement for public open space under Section 18 Subdivision Act 1988 has / has not been made. (ii) The requirement has been satisfied. (iii) The requirement is to be satisfied in stage Council Delegate Council seal Date / / Re-certified under Section 11(7) of the Subdivision Act 1988 Council Delegate Council seal Date 8 / 3 / 3		
VESTING OF ROADS AND/OR RESERVES				
IDENTIFIER	COUNCIL/BODY/PERSON			
R-1 RESERVE No. 1	EAST GIPPSLAND SHIRE COUNCIL EAST GIPPSLAND SHIRE COUNCIL			
		NOTATIONS		
		STAGING This is / is not a staged subdivision Planning Permit No 01/00536/DS		
		DEPTH LIMITATION DOES NOT APPLY		
LOTS 1 TO 13 HAVE BEEN OMITTED FROM THIS PLAN SURVEY: THIS PLAN IS / IS NOT BASED ON SURVEY THIS SURVEY IS CONNECTED TO PERMANENT MARK No(s) IN PROCLAIMED SURVEY AREA No				
EASEMENT INFORMATION				LTO USE ONLY
LEGEND A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)				STATEMENT OF COMPLIANCE / EXEMPTION STATEMENT
				RECEIVED <input checked="" type="checkbox"/>
				DATE 18 / 2 / 4
				LTO USE ONLY
				PLAN REGISTERED
				TIME 12:29
				DATE 20 / 2 / 4
				<i>18</i> Assistant Registrar of Titles
				SHEET 1 OF 2 SHEETS
Crowther & Sadler Pty. Ltd. LICENSED SURVEYORS & TOWN PLANNERS 162 MACLEOD STREET, BAIRNSDALE, VIC. 3875 TELEPHONE (03) 5152 8011		LICENSED SURVEYOR (PRINT) JON MARK BRODZIK SIGNATURE _____ DATE / / REF 10151 VERSION 2		_____ DATE / / COUNCIL DELEGATE SIGNATURE ORIGINAL SHEET SIZE A3



Delivered by LANDATA®, timestamp 16/11/2021 12:44 Page 1 of 22

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**APPLICATION BY A RESPONSIBLE
AUTHORITY under Section 181
Planning and Environment Act 1987 for
ENTRY OF A MEMORANDUM OF
AGREEMENT under Section 173 of the Act**



Lodged by:
EASTCOAST CONVEYANCING
P O BOX NO 695
BAIRNSDALE VIC 3875
Ph: 03 51521171
Customer Code: 549U



The Responsible Authority under the Planning Scheme having entered into an agreement with the parties named for the land described requires that a memorandum of the Agreement be entered on the Certificate of the Title to the land referred to.

LAND ☒ VOLUME 10568 FOLIO 464 ☒ (PARENT TITLE)
NOW = VOLUME 10684 FOLIO 290

ADDRESS OF THE LAND 37 Paynesville Road Paynesville 3880

RESPONSIBLE AUTHORITY EAST GIPPSLAND SHIRE COUNCIL
273 MAIN STREET, BAIRNSDALE

PLANNING SCHEME EAST GIPPSLAND SHIRE PLANNING SCHEME

☒ AGREEMENT DATE 15th DAY OF OCTOBER. 2002 ☒

AGREEMENT WITH Lambertus Robert VAN ELDEN
& Bernadette Anne VAN ELDEN

A copy of the Agreement is attached to this Application

Signature for the Responsible Authority.....

JOHN TRAPP, STATUTORY PLANNER DATE 15 / 10 / 2002

1001
20 NOV 2002

EAST GIPPSLAND SHIRE COUNCIL

-and-

Lambertus Robert VAN ELDEN
& Bernadette Anne VAN ELDEN



**Agreement under Section 173 of the *Planning and
Environment Act 1987***

**Subject Land: 37 Paynesville Road, Paynesville in the State of Victoria
(Lot 2 LP 418876B)**



2



PLANNING AND ENVIRONMENT ACT 1987

SECTION 173 AGREEMENT

THIS AGREEMENT is made the *11th* day of *OCTOBER* 2002

BETWEEN:

EAST GIPPSLAND SHIRE COUNCIL
of 273 Main Street, Bairnsdale in the State of Victoria

("Council")

-and-

Lambertus Robert VAN ELDEN & Bernadette Anne VAN ELDEN
9 Newton Close, Paynesville in the State of Victoria

("the Owner")

INSTRUCTION

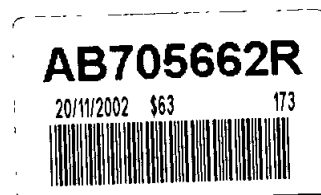
- A. The Council is the Responsible Authority for the Planning Scheme under the Act.
- B. The Owner is the registered proprietor of the Subject Land.
- C. The Council has issued Planning Permit No. 01/00536/DS ("the Planning Permit") to subdivide the land into twenty-nine lots. A copy of the Planning Permit is attached to this Agreement and marked "A".
- D. It is a condition of Planning Permit No. 01/00536/DS that the Owner enter into this Agreement to develop the land in accordance with the Endorsed Plans of the Planning Permit. A copy of the Endorsed Plans are attached to this Agreement and marked "B".
- E. The parties enter into this Agreement –
 - a) to give effect to the requirements of the Planning Permit: and
 - b) to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.



IT IS AGREED:**1. DEFINITIONS**

In this Agreement the words and expressions set out in this clause have the following meanings unless the context admits otherwise –

- 1.1 **"the Act"** means the Planning & Environment Act 1987.
- 1.2 **"this Agreement"** means this agreement and any agreement executed by the parties expressed to be supplemental to this Agreement.
- 1.3 **"the endorsed Plan"** means the plan, endorsed with the stamp of Council, that forms part of the Planning Permit.
- 1.4 **"Owner"** means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as proprietor or proprietors of an estate in fee simple of the Subject land or any part of it and includes a Mortgagee-in-possession.
- 1.5 **"Planning Permit"** means the Planning Permit referred to in recital C of this Agreement.
- 1.6 **"Planning Scheme"** means the East Gippsland Shire Planning Scheme and any other planning scheme which applies to the subject land.
- 1.7 **"Subject Land"** means the land situated at **37 Paynesville Road Paynesville** in the State of Victoria being the land referred to in certificate of Title Volume **10568 Folio 464** and any reference to the Subject Land in this Agreement will include a reference to any lot created by the subdivision of the Subject Land or any part of it.
- 1.8 **"Mortgage"** means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as Mortgagee of the Subject Land or any part of it.



2. INTERPRETATION

In this Agreement unless the context admits otherwise-

- 2.1 The Singular includes the plural and vice versa.
- 2.2 A reference to a gender includes a reference to each other gender.
- 2.3 A reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law.
- 2.4 If a party consists of more than one person this Agreement binds them jointly and each of them severally.
- 2.5 A reference to an Act, Regulation or the Planning Scheme includes any Acts, Regulations or amendments amending, consolidating or replacing the Act, Regulations or Planning Scheme.
- 2.6 The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.
- 2.7 The Obligations of the Owner under this Agreement, will take effect as separate and several covenants which are annexed to and run at law and equity with the Subject Land PROVIDED THAT if the Subject Land is subdivided, this Agreement must be read and applied so that each subsequent owner of a lot is only responsible for those covenants and obligations which relate to that owner's lot.



3. SPECIFIC OBLIGATIONS OF THE OWNER

The Owner covenants and agrees that –

3.1 Development in accordance with Endorsed Plans

the Subject Land shall only be developed in accordance with the Endorsed Plans, and the notation thereon, of the Planning Permit or any subsequent amendment to the plan approved by Council.

- 3.2 Owners of all lots will inform Council prior to starting construction activities for a dwelling on the lot to allow an inspection of the existing Council infrastructure and will post an appropriate bond, refundable in full or part on issue of a certificate of Occupancy, to cover the cost of reinstating any damage to that infrastructure, including street trees, stormwater drains, crossovers and footpaths.

- 3.3 The agreement will bind the application as the owner and shall run with the land so that all successors in title are bound by the agreement.

Councils Costs to be paid

the Owner must pay to the Council, the Council's reasonable costs and expenses (including legal expenses) of and incidental to the preparation, drafting, finalisation, engrossment, execution, registration and enforcement of the Agreement and until those costs are paid they will remain a debt of the Owner to the Council.

4. FURTHER OBLIGATIONS OF THE OWNER

The Owner further covenants and agrees that –

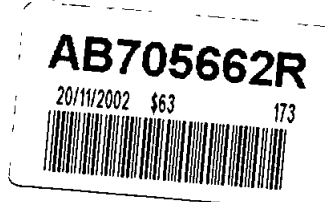
4.1 Notice and Registration



the Owner will bring this Agreement to the attention of all prospective purchasers, mortgages, transferees and assigns;

4.2 Further actions

- 4.2.1 the owner will do all things necessary, including signing any further agreements, undertakings, covenants and consents, approvals or other documents necessary for the purpose of ensuring that the Owner carries out the Owner's covenants under this Agreement and to enable the Council to enforce the performance by the Owner of such covenants and undertakings;



6



- 4.2.2 the Owner will consent to the Council making application to the Registrar of Titles to make a recording of this Agreement in the Registrar on the Certificate of Title of the Subject Land in accordance with Section 181 of the Act and do all things necessary to enable the Council to do so including signing any further agreement, acknowledgment or document or procuring the consent to this Agreement of any mortgage or caveator to enable the recording to be made in the Register under that Section;

4.3 Exemption

the Owner will exempt the Council, its employees, contractors and agents from and against all costs, expenses, losses or damages whatsoever which they or any of them may incur or suffer, or be or become liable for or in respect of any suit, action, proceeding, judgement or claim brought by any non-compliance thereof.

5. AGREEMENT UNDER SECTION 173 OF THE ACT

The Council and the Owner agree that without limiting or restricting their respective powers to enter into this Agreement and, insofar as it can be so treated, this Agreement is made pursuant to Section 173 of the Act.

6. OWNERS WARRANTIES

Without limiting the operation or effect which this Agreement has, the Owner warrants that apart from the Owner and any other person who has consented in writing to this Agreement, no other person has any interest, either legal or equitable, in the Subject Land which may be affected by this Agreement.

7. SUCCESSORS IN TITLE

Without limiting the operation or effect which this Agreement has, the Owner must ensure that, until such time as a memorandum of this agreement is registered on the title to the title to the Subject Land, successors in the title shall be required to:

- 7.1 give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement; and
- 7.2 execute a deed agreeing to be bound by the terms of this Agreement.

GENERAL MATTERS

8.1 Notices

A notice or other communication required or permitted to be served by a party



7

on another party must be in writing and may be served:



- 8.1.1 by delivering it personally;
- 8.1.2 by sending it by prepaid post addressed to that party at the address set out in this Agreement or subsequently notified to each party from time to time;
- 8.1.3 by sending it by facsimile provided that a communication sent by facsimile shall be confirmed immediately in writing by the sending party hand delivery or prepaid post.

8.2 A Notice or other communication is deemed served:

- 8.2.1 if delivered, on the next following business day;
- 8.2.2 if posted, on the expiration of two business days after the day of posting; or
- 8.2.3 if sent by facsimile, on the next following business day unless the receiving party has requested retransmission before the end of that business day.

8.3 No Waiver

Any time or other indulgence granted by the Council to the Owner or any variation of the terms and conditions of this Agreement or any judgement or order obtained by the Council against the Owner will not in any way amount to a waiver of any of the rights or remedies of the Council in relation to the terms of this Agreement.

8.4 Severability

If a court, arbitrator, tribunal or other competent authority determines that a word, phrase, sentence, paragraph or clause of this Agreement is unenforceable, illegal or void then it must be served and the other provisions of this Agreement will remain operative.

8.5 No Fettering of the Council's Powers

It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of Council any decision or impose any requirements or conditions in connection with the granting of any planning approval or certification of any plans of subdivision applicable to the Subject Land or relating to any use or development of the Subject Land.

9. COMMENCEMENT OF AGREEMENT

Unless otherwise provided in this Agreement, this Agreement commences from the date of this Agreement.

ENDING OF AGREEMENT

This Agreement may be ended by Agreement between Council and the Owner.



8

EXECUTED by the parties on the date set out at the commencement of this Agreement.

The **COMMON SEAL** of the
EAST GIPPSLAND SHIRE COUNCIL
 was affixed on behalf of Council by
 authority of the Chief Executive Officer
 on the 11th day of OCTOBER, 2002
 in the presence of:

Phillip R. Davies

PHILLIP R. DAVIES

ACTING CHIEF EXECUTIVE

M Bennett



DAB705662R-9-7

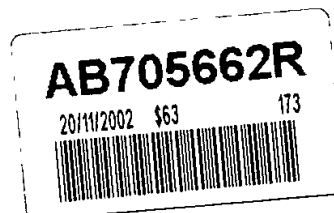
SIGNED SEALED AND DELIVERED
 by Lambertus Robert VAN ELDEN
 & Bernadette Anne VAN ELDEN
 in the presence of:

Lambertus Robert Van Elden

B. A. Van Elden

James Gourley

Witness



PLANNING PERMIT

Permit No: 01/00536/DS AMENDED
 Planning Scheme: EAST GIPPSLAND
 Responsible Authority: East Gippsland Shire

Form 4.4

ADDRESS OF THE LAND

37 Paynesville Road, PAYNESVILLE VIC 3880
 (Lot 1 LP 418876)



BN: 3682

THE PERMIT ALLOWS

The land to be developed and used for a 29 Lot Subdivision in accordance with the endorsed plans.

THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

Amended Plans

- (1) Before the plan of subdivision can be certified, amended plans to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the plans submitted with the application but modified to show:
 - a) The Ashley Street road reserve extending to the western boundary of the land.
 - b) The May Park Drive road reserve extending to the southern boundary of Lot 28.
 - c) The intersection of the access street between Lots 2 and 13 to be located so as to minimise conflicting traffic movements with Hakea Court that intersects with Ashley Street on the southern side.

Subdivision not altered

- (2) The subdivision as shown on the endorsed plans must not be altered without the prior written consent of the responsible authority.

East Gippsland Water's requirements

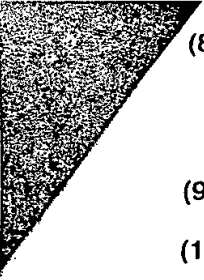
- (3) Enter into an agreement under the Water Act for the provision of water supply works.
- (4) Meet the cost of the necessary water mains extension.
- (5) Payment of a headworks and distribution charge at a level determined by the Authority at the time of payment. As a guide the level applicable at the date of this letter (15/11.01) is \$26000.00 for the additional 26 Lots created by the subdivision.
- (6) Enter into an agreement under the Water Act for the provision of sewerage works.
- (7) Meet the cost of the necessary sewer mains extension.



AB705662R

20/11/2002 \$63 173



- 
- (8) Pavement of an outfall and disposal charge at a level determined by the Authority at the time of payment. As a guide the level applicable at the date of this letter (15/11/01) is \$22100.00 for the additional 26 Lots created by the subdivision.
 - (9) Provide easements as necessary.
 - (10) Connect development to Authority's water and sewerage services to the satisfaction of the Authority.
 - (11) Referral of the Plan of Subdivision to the Authority, prior to Certification.

Country Fire Authority's requirements

Access

- (12) The minimum width of the trafficable road must be six (6) metres.
- (13) There must be no obstructions within one metre of the edge of the formed width of roads at any time, and there must be four metres height clearance above all roads.
- (14) Adequate provisions for turning of fire brigade vehicles must be provided in dead roads and cul de sacs by either:
 - A court bowl with a minimum trafficable area of 10 metres radius; or
 - A "tee" or "wye" head with a minimum formed road surface of each leg being at least 8 metres length measured from the centre point of the head, and 6 metres trafficable width.
- (15) The amount and location of parking facilities should not impede access of emergency vehicles. Off-street parking is therefore encouraged where possible.
- (16) Road structures should have a minimum load limit of 15 tonnes.
- (17) The average grade should be no greater than 1 in 7 (14.4%), however, a maximum of 1 in 5 (20%) may be allowed for a maximum of 50 metres. Dips should have no more than a 1 in 8 entry and exit angle.
- (18) All roads should have a maximum cross fall alignment of 1 in 33 (3%) and a minimum of curves.
- (19) Curves should have a minimum inner radius of ten metres.

Water Supply

- (20) The water reticulation plan must be approved by the CFA.
- (21) There must be a hydrant within 120 metres from the outer edge of the building envelope.
- (22) Fire hydrants must be clearly identified in accordance with the Fire Services Guideline – Identification of Street Hydrants for Fire Fighting Purposes.



DAB705662R-11-8

AB705662R

20/11/2002 \$63 173





Protective Features

- (23) Areas of Public Open Space must be managed in a minimum fuel condition, during the fire danger period.

Telstra's requirements

- (24) That the applicant enters into an agreement with Telstra or other licensed telecommunications carrier for the satisfaction provision of telephone cable reticulation (1) metre into each allotment created.
- (25) That the plan of subdivision submitted for certification be referred to Telstra or other licensed telecommunications carrier, whichever is appropriate, in accordance with Section 8 of the Subdivision Act 1988.
- (26) Set aside on the plan of subdivision, reserve/s satisfactory to Telstra, for Telecommunications substation/s if required.

TXU Networks Pty Ltd's requirements

- (27) The plan of subdivision submitted for certification must be referred to TXU Electricity Ltd in accordance with Section 8 of the Subdivision Act 1988.

The applicant must:

- (28) Enter in an agreement with TXU Electricity Ltd for supply of electricity to each lot on the endorsed plan.
- (29) Enter into an agreement with TXU Electricity Ltd for the rearrangement of the existing electricity supply system.
- (30) Enter into an agreement with TXU Electricity Ltd for the rearrangement of the points of supply to any existing installations affected by any private electric power line which would cross a boundary created by the subdivision, or by such means as may be agreed by TXU Electricity Ltd.
- (31) Provide easements satisfactory to TXU Electricity Ltd for the purpose of "Power Line" in the favour of "Electricity Corporation" pursuant to Section 44 and Schedule 2 of the Electricity Industry Act 1993, where easements have not been otherwise provided, for all existing TXU Electricity electric power lines and for any new power lines required to service the lots on the endorsed plan and /or abutting land.
- (32) Obtain for the use of TXU Electricity Ltd any other easements required to service the lots.
- (33) Adjust the position of any existing TXU Electricity Ltd easement required to service the lots.
- (34) Set aside on the plan of subdivision Reserves for the use of TXU Electricity Ltd for electric substations.
- (35) Provide survey plans for any electric substations required by TXU Electricity Ltd and for associated power lines and cables and executes leases for a period of 30 years, at a nominal rental with a right to extend the lease for a further 30 years. TXU Electricity Ltd requires that such leases are to be noted on the title by way of a caveat or a notification under Section 88(2) of the Transfer of Land Act prior to the registration of the plan of subdivision.

AB705662R



- (36) Provide to TXU Electricity Ltd a copy of the plan of subdivision submitted for certification that shows any amendments that have been required.

Vicroads' requirements

- (37) No access to lots 1 to 27 from the Paynesville Road will be permitted.
- (38) Only one point of access to Lot 28 will be permitted. This access must be at a location and to a standard satisfactory to VicRoads.

Engineering

Infrastructure Design and Construction



- (39) The applicant shall engage a suitably qualified consultant to undertake the preparation of detailed engineering design, drawings, documentation and specifications for the construction of road and drainage works and for the provision of services, all to the satisfaction of Council and meeting the requirements of the relevant service authorities.
- (40) No works shall commence until such time as all necessary approvals from Council and all relevant service authorities have been obtained.
- (41) Infrastructure shall be designed in accordance with standard engineering principles and practices. Full and detailed calculations and reports of all investigations undertaken shall be provided. The design shall provide for the following minimum requirements.

Roads, Pavement and Access

- (42) Investigation shall be undertaken to determine existing site conditions to determine design requirements. All reports and full details of all investigations undertaken shall be provided with designs submitted to Council for approval. Full and detailed calculations supporting all aspects of pavement design shall be provided.
- (43) The cul-de-sac or turning heads of proposed new roads shall be constructed and sealed to provide sufficient space for the manoeuvring of all service and emergency vehicles. "T" or "Y" shaped turning heads are acceptable. Provision of suitable area for vehicles to perform a three-point turn will be acceptable.
- (44) Road pavements shall be provided with kerbing and / or edge restraints to provide for stabilisation and control of pavement and assist with stormwater management.
- i) A driveway crossover or culvert shall be constructed for all allotments to Council's satisfaction and in accordance with Council requirements. Crossing places shall incorporate features to prevent erosion which may include but not be limited to suitable stone pitching in the invert or energy dissipation devices. Proposed details of design and construction for crossovers shall be provided.

Stormwater Drainage

The stormwater drainage system shall be designed in accordance with standard engineering practice to provide for the collection, control and disposal of all stormwater runoff, resulting from a storm having an ARI of 1 in 20 Years, and concentrated by future development of buildings, pavements, and/or site works to avoid damage or inundation to any property.



- (47) The stormwater drainage system shall incorporate measures to ensure the quality of stormwater discharging from the development is maintained. The drainage system shall provide such water quality measures as considered necessary which may include, but not be limited to, the provision of sediment traps, wetlands, detention basins, Gross Pollutant Traps and drainage pits incorporating litter baskets.
- (48) Swale drains shall be constructed to meet Council requirements. Drains shall incorporate features to prevent erosion which may include but not be limited to suitable stone pitching in the invert or energy dissipation devices placed at regular intervals along the length of the drain.
- (49) Each allotment shall be provided with a connection to the drainage system. Connections to the drainage system shall be in accordance with Council requirements. Pipes through the council verge area shall be constructed of steel or concrete, not PVC.
- (50) Where a proposed drainage system submitted to Council for approval indicates that construction of drains will be on private property easements for drainage purposes and meeting the requirements of Council for access and maintenance purposes shall be vested in Council free of charge.
- (51) Outlets shall incorporate energy dissipation devices to prevent erosion. Stormwater outlets shall be fitted with suitable devices to prevent litter, debris and sediment from entering the stormwater drainage system. Details of the device/structure must be provided to and approved by Council prior to construction.
- (52) Stormwater connections to Council's existing drainage infrastructure shall be designed and constructed to Council's satisfaction.

Earthworks

- (53) With the exception of roadside drainage structures roadside verges shall have a batter slope no greater than 8 horizontal to 1 vertical.
- (54) All earthworks associated with the development shall be stabilised in accordance with standard engineering design and practices against erosion and failure. No earthworks may encroach across neighbouring property boundaries.

Services

- (55) Design for the installation of services shall meet the requirements of the relevant authorities and shall be approved by those authorities.

Signage and Traffic Control

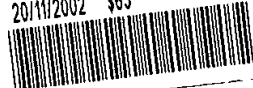
- (56) The design shall address and include all applicable and statutory signage and traffic control requirements. Design drawings and specifications shall provide for the installation of appropriate signage and pavement markings conforming with the requirements of AS 1742 Manual of uniform traffic control devices. Provision of necessary signage and pavement marking shall be undertaken by the developer



Planning Permit No. 01/00536/DS - Page 5

AB705662R

20/11/2002 \$63



5

Landscaping

- (57) A landscaping plan shall be submitted providing for a minimum 1 street tree per allotment of a species approved by Council, to be planted on roadside verges. The applicant shall be required to maintain street trees with watering as necessary for a period of twelve (12) months following the issue of a Certificate of Practical Completion of the works. Trees becoming dead or diseased during this period shall be replaced by the applicant.

Documentation

- (58) All documentation for the construction of infrastructure shall include adequate provision for:
- maintenance and repair of damage to existing infrastructure damaged as a result of works associated with this development
 - quality assurance and testing procedures
 - provision for adequate notification and inspections by Council representatives at various key stages of the works
 - works to be undertaken with due regard to environmental requirements.

- (59) The works shall be subject to a twelve (12) month defects liability period.

Supervision of Works

- (60) An appropriately qualified and registered practitioner to the satisfaction of the Responsible Authority must supervise all stages of works to be constructed on the site.
- (61) Copies of all test results certified by a NATA accredited laboratory shall be provided with a certification by a Chartered Professional Engineer that all works have been constructed in accordance with approved plans and specifications will be required.

Protection of Infrastructure and Environment

- (62) Any portion of Council's existing infrastructure damaged as a result of work undertaken on the site or associated with the development shall be repaired/reinstated to Council's satisfaction at the developer's expense.
- (63) Temporary debris and sediment control measures shall be installed to prevent debris and sediment from entering Council's drainage system during all construction stages of both the land division and future development on the proposed allotments. Pollution prevention measures, shall be in accordance with the Environmental Protection Authority's Publication Number 275 "Construction Techniques for Sediment Pollution Control".

Public Open Space

- (64) The applicant or owner must pay to the Council a sum equivalent to five per cent of the site value of the land comprised in Lots 1 to 27 in the subdivision. This payment must be made before a statement of compliance is issued and may be varied under Section 19 of the Subdivision Act 1988.

**AB705662R**

20/11/2002 \$63 173



Section 173 Agreements

- (65) Before the issue of a Statement of Compliance, the owner of the land shall enter into an agreement with the Responsible Authority in accordance with Section 173 of the Planning & Environment Act, 1987 which will covenant that:

Owners of all lots will inform Council prior to starting construction activities for a dwelling on the lot to allow an inspection of the existing Council infrastructure and will post an appropriate bond, refundable in full or part on issue of a Certificate of Occupancy, to cover the cost of reinstating any damage to that infrastructure, including street trees, stormwater drains, crossovers and footpaths.

The agreement will bind the applicant as the owner and shall run with the land so that all successors in title are bound by the agreement.

This agreement will be prepared at the applicant's cost and to the satisfaction of the Responsible Authority, and shall be registered on the title in accordance with Section 181 of the Planning & Environment Act, 1987.

Plan Checking and Supervision Fees

- (66) Prior to the issue of a Statement of Compliance the applicant shall pay to the Council an amount of money equal to 0.75% of the estimated cost of the engineering works plus 2.5% of the actual cost of the engineering works for checking of plans and specifications and for on-site supervision of the engineering works respectively in accordance with Clause 8 and 9 of the Subdivision (Permit and Certification Fees) Regulations 1989.

Time

- (67) This permit will expire if one of the following circumstances applies:
- The subdivision is not certified within two years.
 - The subdivision is not registered within five years of the date of Certification.

The responsible authority may extend the periods referred to if a request is made in writing before the permit expires or within three months afterwards.

Notes:**TXU Networks Pty Ltd notes:**

- (1) It is recommended that, at an early date the applicant commences negotiations with TXU Electricity Ltd for a supply of electricity in order that supply arrangements can be worked out in detail, so prescribed information can be issued without delay (the release to the municipality enabling a Statement of Compliance with the conditions to be issued).
- (2) Arrangements for the supply will be subject to obtaining the agreements of other Authorities and any landowners affected by routes of the electric power lines required to supply the lots and for any tree clearing.



AB705662R



- (3) Prospective purchasers of lots on this plan should contact this office to determine the availability of a supply of electricity. Financial contributions may be required.

Amended 15/05/2002: Condition 12 & 14 amended at the request of the Country Fire Authority.

Amended 11/06/2002: Amended to Increase Subdivision size to 29 Lots

Date Amended: 11/06/2002

Date Issued: 14/05/2002


Signature for the
Responsible Authority

Page 8 of 8

AB705662R

20/11/2002 \$63 173



DAB705662R-17-0

IMPORTANT INFORMATION ABOUT THIS NOTICE**WHAT HAS BEEN DECIDED?**

The responsible authority has issued a permit.

AB705662R**WHEN DOES A PERMIT BEGIN?**

20/11/2002 \$63 173


A permit operates:

- ♦ From the date specified in the permit, or
- ♦ If no date is specified from:
 1. The date of the decision of the Victorian Civil and Administrative Tribunal, if the permit was issued at direction of the Tribunal, or
 2. The date on which it was issued, in any other case.



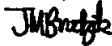
WHEN DOES A PERMIT EXPIRE?

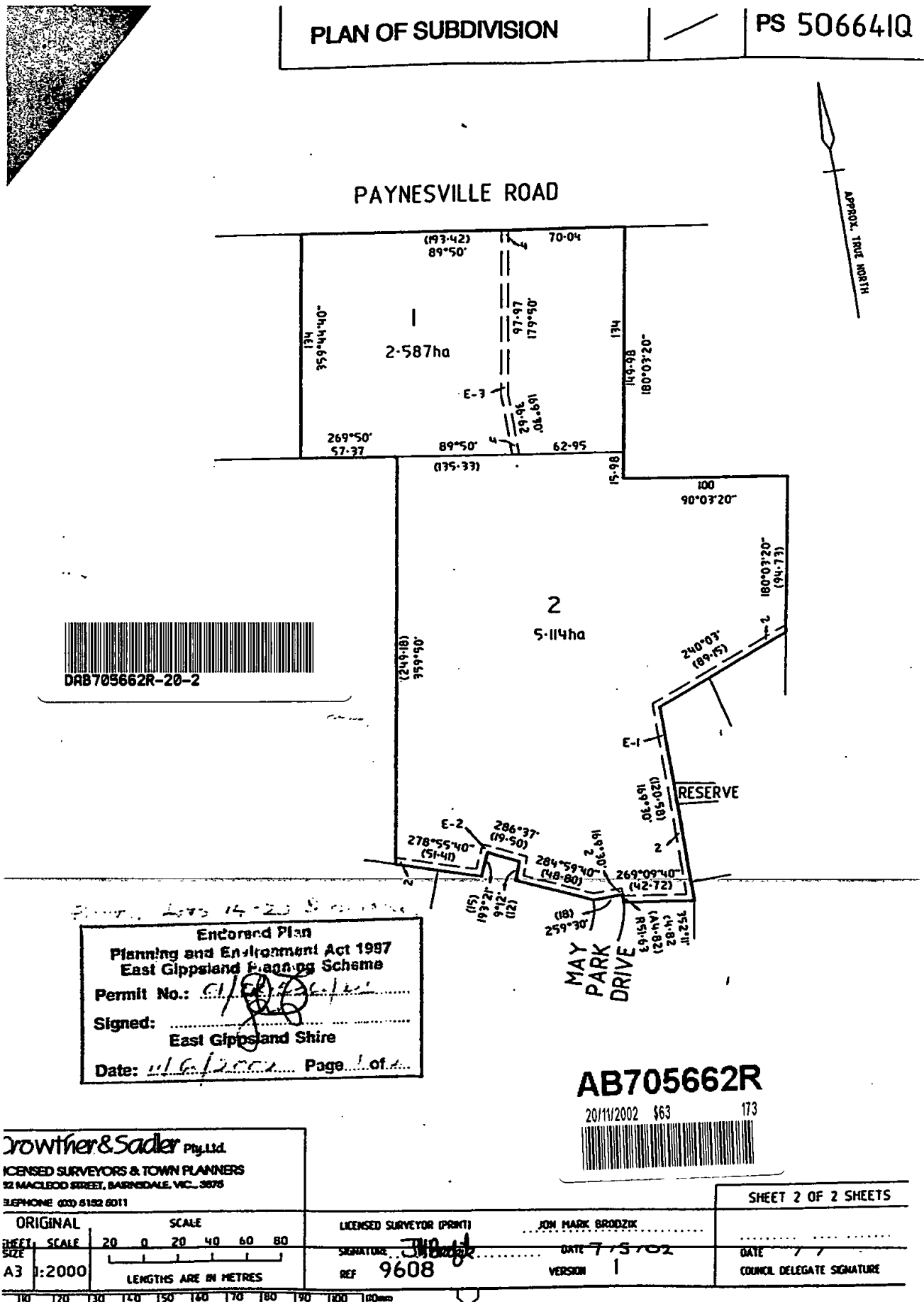
1. A permit for the development of land expires if:
 - ♦ The development of any stage of it does not start within the time specified in the permit, or the development requires the certification of a plan of subdivision or consolidation under the Subdivision Act 1988 and the plan not certified within two years of the issue of the permit, unless the permit contains a different provision; or
 - ♦ If the development or any stage is not completed within the time specified in the permit, or if no time is specified within two years after the issue of the permit, or in the case of a subdivision or consolidation within 5 years of the certification of the plan of subdivision or consolidation under the Subdivision Act 1988.
2. A permit for the use of land expires if:
 - ♦ The use does not start within the time specified in the permit, or if no time is specified, within two years after the issue of the permit, or
 - ♦ The use is discontinued for a period of two years.
3. A permit for the development and use of the land expires if:
 - ♦ The development or any stage of it does not start within the time specified in the permit, or
 - ♦ The development or any stage of it does not start within the time specified in the permit, or if no time is specified within two years after the issue of the permit.
 - ♦ The use does not start within the time specified in the permit, or if no time is specified, within two years after the completion of the development, or
 - ♦ The use is discontinued for a period of two years.
4. If a permit for the use of land or the development and use of land or relating to any of the circumstances mentioned in Section 6A(2) of the Planning and Environment Act 1987, or to any combination of use, development or any of those circumstances requires the certification of a plan under the Subdivision Act 1988, unless the permit contains a different provision -
 - ♦ The use or development of any stage is to be taken to have started when the plan is certified; and
 - ♦ The permit expires if the plan is not certified within two years of the issue of the permit.
5. The expiry of a permit does not affect the validity of anything done under that permit before the expiry date.


WHAT ABOUT APPEALS?

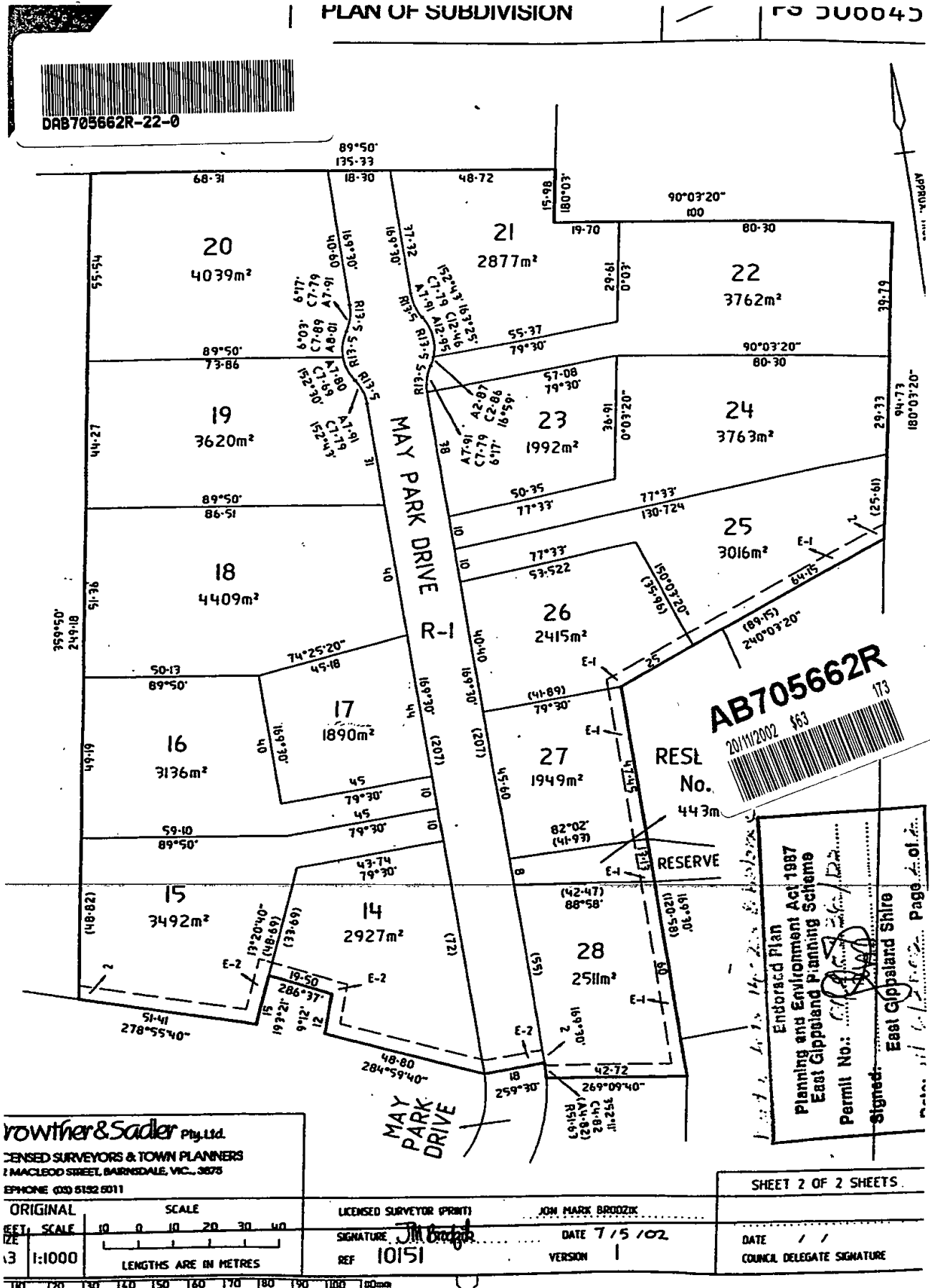
- ♦ The person who applied for the permit may appeal against any condition in the permit unless it was granted at the direction of the Victorian Civil and Administrative Tribunal where, in such case, no right of appeal exists.
- ♦ An appeal must be lodged within 60 days after the permit was issued, unless a Notice of Decision to Grant a Permit has been issued previously, in which case the appeal must be lodged within 60 days after the giving of that notice.
- ♦ An appeal is lodged with the Victorian Civil and Administrative Tribunal.
- ♦ An appeal must be made on a Notice of Appeal form, which can be obtained from the Victorian Civil and Administrative Tribunal, and be accompanied by the prescribed fee. An appeal must state the grounds on which it is based.
- ♦ An appeal must also be served on the responsible authority.
- ♦ Details about appeals and the fees payable can be obtained from the Victorian Civil and Administrative Tribunal


 DAB705662R-18-3

PLAN OF SUBDIVISION		STAGE No. <div style="border-bottom: 1px solid black; width: 50px; margin: 0 auto;"></div>	LTD USE ONLY EDITION	PLAN NUMBER PS 50664IQ																
LOCATION OF LAND BARNSDALE SECTION: — ION: — IN ALLOTMENT: 141 (PART) IN PORTION: — AGE RECORD: VICMAP DIGITAL PROPERTY (RURAL) REFERENCES: VOL FOL PLAN REFERENCE: LOT 2 ON PS 408768 ADDRESS: MAY PARK DRIVE, <small>(of subdivision)</small> PAYNESVILLE, 3880 COORDINATES: E 562 500 <small>(loc. centre of plan)</small> N 5803 650 ZONE: 55		COUNCIL CERTIFICATION AND ENDORSEMENT COUNCIL NAME: EAST GIPPSLAND SHIRE COUNCIL REF: 1. This plan is certified under Section 6 of the Subdivision Act 1988. 2. This plan is certified under Section 8(7) of the Subdivision Act 1988. Date of original certification under Section 6 / / / 3. This is a statement of compliance issued under Section 21 of the Subdivision Act 1988. OPEN SPACE (i) A requirement for public open space under Section 18 Subdivision Act 1988 has / has not been made. (ii) The requirement has been satisfied. (iii) The requirement is to be satisfied in stage Council Delegate Council seal Date / / Re-certified under Section 8(7) of the Subdivision Act 1988 Council Delegate Council seal Date / /																		
STAGING OF ROADS AND/OR RESERVES <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 20%;">IDENTIFIER</th> <th style="width: 80%;">COUNCIL/BODY/PERSON</th> </tr> <tr> <td style="text-align: center;">NIL</td> <td style="text-align: center;">NIL</td> </tr> </table>		IDENTIFIER	COUNCIL/BODY/PERSON	NIL	NIL	NOTATIONS STAGING This is / is not a staged subdivision Planning Permit No 01/00536/DS DEPTH LIMITATION DOES NOT APPLY														
IDENTIFIER	COUNCIL/BODY/PERSON																			
NIL	NIL																			
 DB705662R-19-7		AB705662R 20/11/2002 \$63 173 																		
SURVEY: THIS PLAN IS / IS NOT BASED ON SURVEY THIS SURVEY IS CONNECTED TO PERMANENT MARK (s) IN PROCLAIMED SURVEY AREA No																				
EASEMENT INFORMATION				LTD USE ONLY																
A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)				STATEMENT OF COMPLIANCE / EXEMPTION STATEMENT																
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 25%;">Purpose</th> <th style="width: 10%;">Width (Metres)</th> <th style="width: 20%;">Origin</th> <th style="width: 45%;">Land Benefited/In Favour Of</th> </tr> <tr> <td>DRAINAGE & SEWERAGE</td> <td style="text-align: center;">2</td> <td>PS 306497K</td> <td>LAND IN PS 306497K</td> </tr> <tr> <td>DRAINAGE</td> <td style="text-align: center;">2</td> <td>PS4188768</td> <td>LAND IN PS4188768</td> </tr> <tr> <td>WATER SUPPLY</td> <td style="text-align: center;">4</td> <td>THIS PLAN</td> <td>EAST GIPPSLAND REGION WATER AUTHORITY</td> </tr> </table>				Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of	DRAINAGE & SEWERAGE	2	PS 306497K	LAND IN PS 306497K	DRAINAGE	2	PS4188768	LAND IN PS4188768	WATER SUPPLY	4	THIS PLAN	EAST GIPPSLAND REGION WATER AUTHORITY	RECEIVED <input type="checkbox"/> DATE / /
Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of																	
DRAINAGE & SEWERAGE	2	PS 306497K	LAND IN PS 306497K																	
DRAINAGE	2	PS4188768	LAND IN PS4188768																	
WATER SUPPLY	4	THIS PLAN	EAST GIPPSLAND REGION WATER AUTHORITY																	
LTO USE ONLY PLAN REGISTERED TIME DATE / /				Assistant Registrar of Titles SHEET 1 OF 2 SHEETS																
Fraser & Sadler Pty. Ltd. SURVEYORS & TOWN PLANNERS 10 STREET, BARNSDALE, VIC., 3675 030 5152 8011		LICENSED SURVEYOR (PRINT) JON MARK BROOZIK SIGNATURE  DATE 7 / 5 / 02 REF 9608 VERSION 1		DATE / / COUNCIL DELEGATE SIGNATURE ORIGINAL SHEET SIZE A3																



EASEMENT INFORMATION				LTO USE ONLY	
<div style="display: flex; justify-content: space-between;"> A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road) </div>				STATEMENT OF COMPLIANCE / EXEMPTION STATEMENT	
				RECEIVED 	
				DATE / /	
				LTO USE ONLY PLAN REGISTERED TIME DATE / /	
				Assistant Registrar of Titles	
				SHEET 1 OF 2 SHEETS	
 DAB705662R-21-6				DATE / /	
Purpose RAINAGE & SEWERAGE RAINAGE		Width (Metres) 2 2		Origin PS 306497K PS408768	
		Land Benefited/in Favour Of LAND IN PS 306497K LAND IN PS408768		COUNCIL DELEGATE SIGNATURE	
Surveyor & Town Planners Pty. Ltd. SURVEYORS & TOWN PLANNERS 1522 BARRISDALE, VIC. 3086 0192 0011		LICENSED SURVEYOR (PRINT) JON MARK BRODZIK SIGNATURE <i>JMB</i> REF 10151		DATE 7 / 5 / 02 VERSION 1	
				ORIGINAL SHEET SIZE A3	



Delivered by LANDATA®, timestamp 16/11/2021 12:44. Page 1 of 8

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LODGED BY Warren, Graham & Murphy

CODE...1716W....

VICTORIA

01 04 21 R3337 99X

100591 0926 MISC 451 R333799X

~~100591 0926 MISC R333799X~~

APPLICATION BY A RESPONSIBLE AUTHORITY
under Section 181 Planning and
Environment Act 1987 for ENTRY OF A
MEMORANDUM OF AGREEMENT under Section
173 of the Act.

The Responsible Authority under the Planning Scheme having entered into an Agreement with the parties named for the land described requires that a Memorandum of Agreement be entered on the Certificate of Title to the land referred to.

LAND Certificate of Title Volume 9630 Folio 629 ^{new with}
10020 - 573/573 (6.c.)

ADDRESS OF LAND Williams Street, Paynesville

RESPONSIBLE AUTHORITY Shire of Bairnsdale

PLANNING SCHEME Bairnsdale Shire Planning Scheme

AGREEMENT DATE

10th April, 1991

AGREEMENT WITH

TWENTYFIRST MOUNT COPE PROPRIETARY
LIMITED
as owner

A copy of the Agreement is attached to this Application

SHIRE OF BAIRNSDALE

Signature for the Responsible Authority

Planning Officer

Name of Officer

D. G. STEWART

Date

15 - 4 - 1991

Prepared by Warren, Graham & Murphy of 119 Main Street, Bairnsdale (DGL:j1)

memorandum of the within instrument
has been entered in the Register Book.



SECTION 173 AGREEMENT

THIS AGREEMENT is made the *10th* day of *April*, 1991
B E T W E E N:

THE PRESIDENT COUNCILLORS AND RATEPAYERS
OF THE SHIRE OF BAIRNSDALE
 (hereinafter called "the Council")

of the first part

- and -

TWENTYFIRST MOUNT COPE PROPRIETARY LIMITED
 the registered office of which Company is at
 119 Main Street, Bairnsdale
 (hereinafter called "the Owner")

of the second part

W H E R E A S:

- A. The Owner is the registered proprietor of the land described in the First Schedule hereto (hereinafter called "the subject land") and has made Application to the Council as the Responsible Authority under the Bairnsdale (Shire) Planning Scheme (hereinafter called "the Scheme") to subdivide the subject land into five lots as shown on the copy Plan of Subdivision annexed hereto.
- B. The Council has granted Planning Permit Number 77-89-0159 (hereinafter called "the Permit") subject to certain conditions including a condition as follows:
 "6.3 Public Open Space.
 The requirement for Public Open Space in accordance with Section 18 of the Subdivision Act shall be satisfied by the setting aside of land equivalent to five per cent of the area of Lots 1 to 5 and the associated access roads and walkways on the subdivision.
 That part of the Public Open Space not provided in the form of reserves on the subdivision hereby approved shall be deferred in accordance with Section 18.2 of the Subdivision Act until a future stage of subdivision of the Riviera Parklands Estate where reserves are required.
7. Prior to the certification of the Plan of Subdivision, the operator of the permit hereby issued shall enter into an Agreement with the Council under Section 173 of the Planning and Environment Act 1987 which shall covenant that the owners and successors in title shall

- 2 -

not build any residential development other than one single detached house on any lot on the subdivision and such Agreement shall be registered under the provisions of Section 181 of the Act. The cost of preparation of the Agreement and registration shall be borne by the operator of the permit."

- C. The Council certified the Owners Plan of Subdivision number 306497K effecting the subject land on the 25th day of September, 1990 (hereinafter called "the Plan of Subdivision").
- D. Mortgage number L645957X described in the Second Schedule encumbers the subject land.
- E. The Council and the Owner have agreed that without restricting or limiting their respective powers to enter into this Agreement and insofar as it can be so treated, this Agreement shall be treated as an Agreement under 173 of the Planning and Environment Act 1987.

NOW THIS AGREEMENT WITNESSETH:

1. In this Agreement, unless inconsistent with the context or subject matter:-
 - "Owner" shall mean the person or persons entitled from time to time to be registered by the Registrar of Titles as the proprietor or proprietors of an estate in fee simple of the subject land.
 - "Subdivision" includes:-
 - (a) the dividing of land into two or more parts -
 - (i) by sale, conveyance, transfer or partition; or
 - (ii) by procuring the issue of a Certificate of Title under the Transfer of Land Act 1958 in respect of a part of the land;
 - (b) the subdivision of land by sale, transfer or partition into two or more lots and common property, none of which consists in whole or in part of a stratum or strata;
 - (c) the subdivision of land by sale, transfer or partition into two or more units or into two or more units and common property whether or not any unit is on the same level as any other unit;
 and "subdivided" has a corresponding interpretation.
2. The Owner with the intent that its covenant shall run with the subject land hereby covenants and agrees that it (which term shall include the Owner or Owners of the subject land or any part from time to time) will:-
 - (a) Comply with the conditions of the Permit.
 - (b) provide Public Open Space in accordance with Section 18 of the Subdivision Act by setting aside land equivalent to five percent of the areas of lots 1 to 5 and the associated access roads and

- 3 -

walkways on the subdivision and that part of the said Public Open Space not provided in the form of reserve on the said subdivision shall be provided in a future stage of the subdivision of The Riviera Parklands Estate of which the said subdivision forms part.

- (c) Not build any residential development other than one single detached house on any lot on the subdivision;
 - (d) Pay the cost of preparation of this Agreement and its registration in accordance with Section 181 of the Planning and Environment Act 1987.
3. The Owner agrees to do all things necessary to enable the Council to enter a memorandum of this Agreement on the Certificate of Title to the subject land in accordance with Section 181 of the Act including signing any further Agreement, acknowledgement or document to enable the said memorandum to be registered under that Section.
 4. The Owner covenants and agrees to pay the Council's costs of and incidental to the preparation and execution of this Agreement and the registration of a memorandum of the Agreement at the Land Titles Office pursuant to Section 181 of the Act and any duties or fees payable in connection with the Agreement or registration of the memorandum at the Land Titles Office.
 5. The Mortgagee consents to the Owner entering into this Agreement.
 6. This Agreement will lapse pursuant to Section 171 of the Act upon the Owner complying with all of the conditions in the Permit.

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first hereinbefore written.

THE COMMON SEAL of THE PRESIDENT)
 COUNCILLORS AND RATEPAYERS OF)
 SHIRE OF BAIRNSDALE was hereunto)
 affixed in the presence of:)

..... Councillor

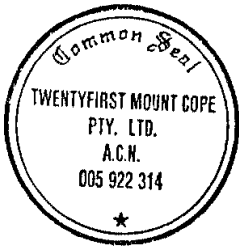
..... Councillor

..... Shire Secretary

- 4 -

THE COMMON SEAL of TWENTYFIRST)
MOUNT COPE was hereunto affixed)
in accordance with its Articles)
of Association in the presence of:)

..... Director
..... Director



AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED the Mortgagee under registered
Mortgage Number L645957X of the land comprised in Certificate of Title Volume
9630 Folio 629 HEREBY CONSENTS to the above Application.

- 5 -

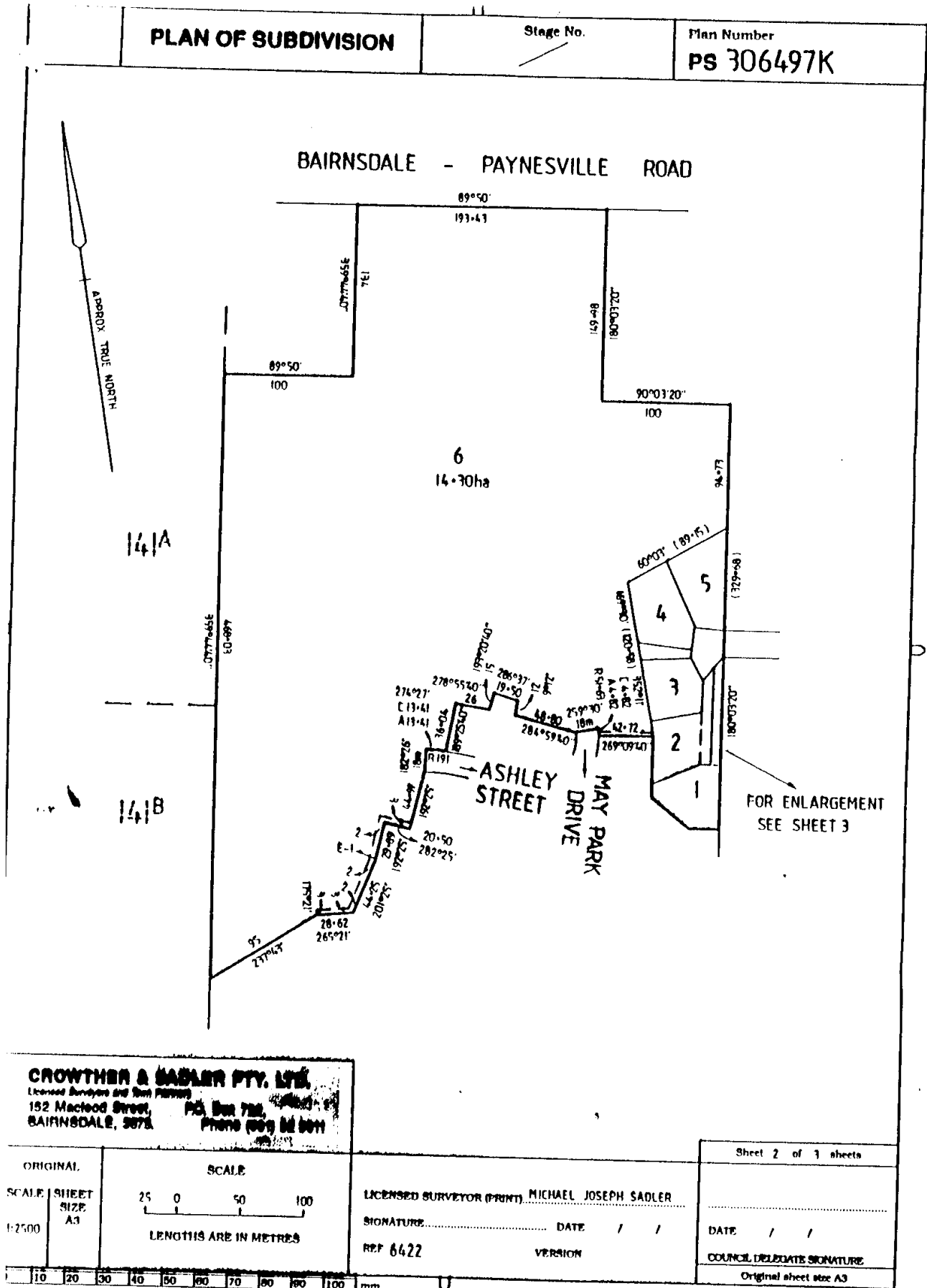
FIRST SCHEDULE

The whole of the land described in Certificate of Title Volume 9630 Folio 629.

- 6 -

SECOND SCHEDULE

Mortgage Number L645957X to Australia and New Zealand Banking Group Limited 38
Franklin Street, Traralgon Victoria.



T.O.2

Our ref: 19265

152 Macleod St.
PO Box 722,
Bairnsdale, VIC 3875

P: 5152 5011
F: 5152 5705

E: contact@crowthersadler.com.au

16 November 2021

Statutory Planning Coordinator
East Gippsland Shire Council
Via Email: planning@egipps.vic.gov.au

Attention: Mr. Robert Pringle

Dear Robert,

**Re: Request to end Legal Agreement AL961631J
Lot 15 PS 722623L
40 Koraleigh View, Nicholson**

We refer to Planning Application 107/2021/VIC for buildings and works (Shed) on the abovementioned land which was lodged with Council on 6 October 2021 and respectfully request Council's consent to the ending of Legal Agreement AL961631J as currently registered on title.

Purpose for Removal and Background

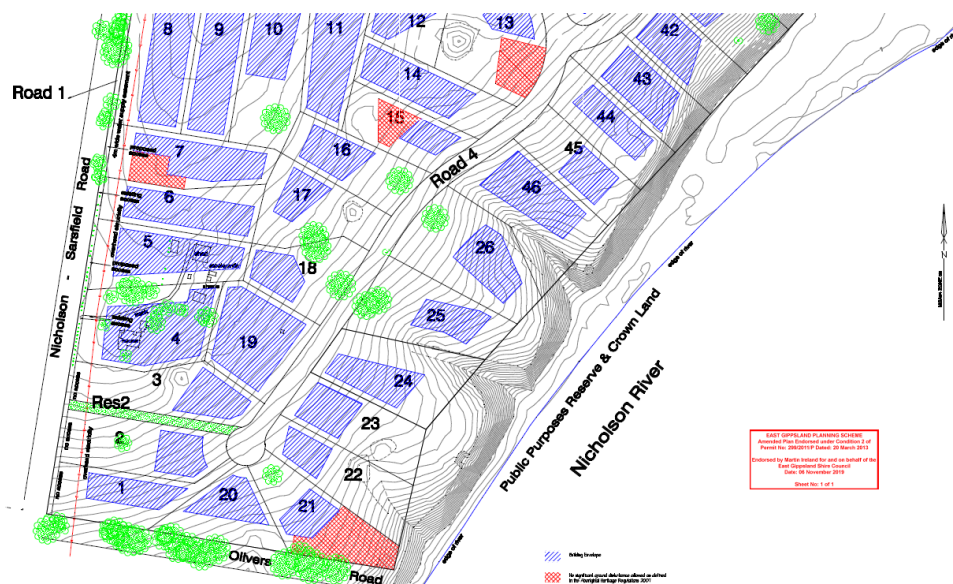
The purpose in part of the Agreement was to ensure any dwellings constructed on the subject land were constructed in accordance with the approved Cultural Heritage Management Plan.

It would appear that in order to ensure the requirements of the approved Cultural Heritage Management Plan were met, the land surveyor that designed the subdivision incorporated a building envelope plan and an area (building exclusion zone) that was not to be subject to significant ground disturbance.

The Building Envelope Plan endorsed in accordance with Condition 2 as part of Planning Permit 299/2011/P continued to apply by virtue of Agreement AL961631J, being registered on title to the subject land.



Principal: Michael J. Sadler, L.S., Dip Surv, M.I.S., MAICD



Extract of Plan referenced within the Agreement

The approved Cultural Heritage Management Plan, CHMP11323 applies to the properties within the Riverbend Estate.

The approved Cultural Heritage Management Plan was more detailed than the approved Building Envelope Plan and the Agreement reflect. Advice has been provided by one of the authors of the CHMP who is now a Director and Principal Heritage Advisor with *Unearthed Heritage* and is provided as an attachment.

CHMP 11323 allowed for three zones being:

Table 1: Permissible ground disturbing activities within each zone. (From CHMP 11323, 126)

Zone	Description	Description of permissible ground disturbing activities within zone
1	Building envelope / road envelope	Permissible activities consist of all activities permissible under the relevant planning scheme (i.e. house construction, garage construction, landscaping, road & drainage construction, services reticulation etc. are all permissible)
2	Services envelope	Permissible activities consist of all activities permissible under the relevant planning scheme with the exception of the construction of any residential buildings (i.e. a driveway, services trenches, landscaping etc. are all permissible, while the construction of a house is not).
3	Increased harm minimisation envelope	Permissible activities consist of mechanical excavation only for the construction of residential storm water drains (if required). Landscaping and other ground disturbing impacts of a non-mechanical nature are permissible. There is to be no construction of buildings, structures, or ground disturbing works for the purposes of services.

Extract from CHMP 11323

It is respectfully suggested that the Building Envelope Plan should have included Zone 2, services envelope. As the services envelope was not included or otherwise acknowledged on the plans, Agreement AL961631J resulted in no building being allowed to be developed outside the nominated building envelope.

This is clearly not the intension and does not reflect the requirements of CHMP 11323.

We believe that the Legal Agreement should be ended and a new agreement to be entered into to reflect the full requirements of CHMP 11323.

A planning permit application for buildings and works (proposed shed) on the subject land was lodged with Council on 6 October 2021. The application is yet to be determined.



Site plan of the proposed shed (which is currently not within the building envelope)

It is considered that a pathway to address the limitations is to end Agreement AL961631J on the basis that prior to Agreement AL961631J being ended the owner enter into a new agreement with Council that would only change the definition of the subject land and alter the Owners Specific Obligations at 6.5 Building Envelopes that would read:

Unless with Council's prior written consent, the Owner must not build, construct or erect or cause or permit to be built, constructed or erected any Building outside a Building and Waste Disposal Envelope.

Such a change would allow Council to consider on merit the construction of an outbuilding on the subject land outside the Building Envelope.

The Proposal

Our proposal to end the Agreement as it applies to the subject land has been made pursuant to Section 178A(1)(b) of the *Planning & Environment Act 1987*.

Section 178A(2)(b) requires the application to be “*accompanied by the information required by the regulations*”. In accordance with the requirements of Regulation 55 of the *Planning & Environment Regulations 2015* we provide the following requisite information:

Regulation 55(a) - we confirm the Applicant for the request to end the Agreement is Mr. John Holzer, C/- Crowther & Sadler Pty. Ltd of 152 Macleod Street, Bairnsdale, Victoria, 3875. Phone number for the Applicant is 5152 5011.

Regulation 55(b) – the Agreement AL961631J is to be ended as it applies to 40 Koraleigh View, Nicholson, formally described as Lot 15 on PS722623L.

Regulation 55(c) - not applicable as the proposal does not seek to amend the Agreement.

Regulation 55(d)(i) – not applicable to the proposal does not seek to end the Agreement in part.

Regulation 55(d)(ii) – the proposal seeks to end the Agreement as applying to part of the land. The Agreement is to be ended as it applies to 40 Koraleigh View, Nicholson, formally described as Lot 15 on PS722623L.

Regulation 55(d)(iii) – the Agreement is an unnecessary restriction on the land and does not reflect accurately the requirements of the approved Cultural Heritage Management Plan and will be at conflict with our Client’s desire to undertake buildings and works (proposed shed) in accordance with the provisions of the East Gippsland Planning Scheme.

To assist with Council’s consideration of our request in accordance with Section 178(B)(2) of the Act, we are pleased to provide the following information.

Purpose of the Agreement

The purpose of the Agreement was in part to ensure any buildings erected on the subject land were consistent with the requirements of the approved Cultural Heritage Management Plan (other requirements of the agreement were to provide for ongoing restrictions associated with the subdivision consistent with other permit conditions).

Why the Agreement is no longer required

The agreement at Clause 6 *Owner's further obligations*, more particularly at Clause 6.5 *Building envelopes*, is no longer required as it relates to 40 Koraleigh View, Nicholson, formally described as Lot 15 on PS722623L because it does not accurately reflect all the requirements of the approved Cultural Management Plan.

The Agreement is considered to impose an unreasonable limitation on the land that inconsistent with the provisions of the East Gippsland Planning Scheme. It is therefore appropriate that it be ended.

Whether the ending of the agreement would disadvantage any person, whether or not a party to the agreement

The ending of the Agreement will not give rise to any form of disadvantage to any other person.

The ending of the Agreement will simply enable future development to occur on the subject land consistent with the provisions of the Low Density Residential Zone as currently applying.

Existing development contained on many properties within the Riverbend Estate are developed with outbuildings associated with dwellings.

The reasons why the responsible authority entered into the agreement

The Agreement was appropriately entered into by Council at the time in accordance with conditions on Planning Permit 299/2011/P.

Any relevant permit or other requirements the land is subject to under the Subdivision Act 1988

None applicable.

Any other prescribed matter

We are not aware of any other prescribed matter which is relevant to the request to end the Agreement as it applies to the subject land.

Section 178A(2)(c) of the Act requires an application of this type to be accompanied by the requisite fee as prescribed by the *Planning & Environment (Fees) Regulations 2016*.

Payment to the *East Gippsland Shire Council* in the amount of \$668.84 (Regulation 16) has been made to facilitate the processing of this request.

We trust this information provides sufficient detail to facilitate Council's commencement of the process associated with the ending of the Agreement as it applies to the subject land. We respectfully await Council's timely advice regarding the scheduling of this matter on the next available Ordinary Council Meeting agenda.

Regards,



RICHARD HOXLEY
Senior Planner

*Encl. Copy of Title (Lot 15 PS722623L)
S173LA AL961631J
Voluntary proposed draft legal agreement
Unearthed Heritage letter of advice dated 18/10/2021
Required fee of \$668.84*

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The Victorian Government acknowledges the Traditional Owners of Victoria and pays respects to their ongoing connection to their Country, History and Culture. The Victorian Government extends this respect to their Elders, past, present and emerging.

REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958

VOLUME 11582 FOLIO 864

Security no : 124092909873L

Produced 06/10/2021 02:52 PM

LAND DESCRIPTION

Lot 15 on Plan of Subdivision 722623L.
PARENT TITLE Volume 11582 Folio 828
Created by instrument PS722623L 09/07/2015

REGISTERED PROPRIETOR

Estate Fee Simple
Sole Proprietor
JOHN ANDREW HOLZER of 40 KORALEIGH VIEW NICHOLSON VIC 3882
AT578225M 04/09/2020

ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE AT578226K 04/09/2020
PERPETUAL TRUSTEE COMPANY LTD

COVENANT AN035608C 22/08/2016

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

AGREEMENT Section 173 Planning and Environment Act 1987
AL961631J 17/06/2015

DIAGRAM LOCATION

SEE PS722623L FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 40 KORALEIGH VIEW NICHOLSON VIC 3882

ADMINISTRATIVE NOTICES

NIL

eCT Control 18440T MSA NATIONAL
Effective from 04/09/2020

DOCUMENT END

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Delivered by LANDATA®, timestamp 06/10/2021 14:54 Page 1 of 3

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TRANSFER OF LAND

Creating an Easement and/or Restrictive Covenant

Section 45 Transfer of Land Act 1958



Lodged by

Name: Eastcoast Conveyancing Group Pty Ltd

Phone:

Address: PO Box 695 BAIRNSDALE VIC 3875

Reference: 16-3626

Customer Code: 549U

The transferor at the direction of the directing party (if any) transfers to the transferee the estate and interest specified in the land described for the consideration expressed-

- together with any easements created by this transfer;
- subject to the encumbrances affecting the land including any created by dealings lodged for registration before the lodging of this transfer; and
- subject to any easements reserved by this transfer or restrictive covenant contained or covenant created pursuant to statute and included in this transfer.

Land: (volume and folio)

Certificate of Title

Volume	Folio
11582	864

Estate and Interest: (e.g. "all my estate in fee simple")
All its estate in fee simple

Consideration:
\$85,500.00

Transferor: (full name)
NICHOLSON RIVER PTY LTD ACN 140 839 710

Transferee: (full name and address including postcode)
LANDERS TRUEMAN BROOKE-KELLY AND RIVA JAIM BROOKE-KELLY of 'Hiltone' 335 Thuddunga Road YOUNG NSW 2594 as Joint proprietors

Directing Party: (full name)

Creation and/or Reservation of Easement and/or Restrictive Covenant

The Transferee with the intent that the benefit of this Covenant shall be attached to and run at law and in equity with the whole of the land comprised in Plan of Subdivision NoPS722623L (other than the land hereby transferred) and each and every part thereof and that the burden of this Covenant shall be annexed to and run at law and in equity with the land hereby transferred and each and every part thereof and that the same shall be noted and appear on every Certificate of Title for the said land and every part thereof as an encumbrance affecting the same DOES HEREBY COVENANT with the Transferor and other registered proprietor or proprietors for the time being of the land comprised in the said Plan of Subdivision (other than the land hereby transferred) that the Transferee will not:

30800812A

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Page 1 of 3

Duty Use Only

THE BACK OF THIS FORM MUST NOT BE USED

Land Victoria, 570 Bourke Street, Melbourne, 3000, Phone 8636-2010

TRANSFER OF LAND
Creating an Easement and/or
Restrictive Covenant
Section 45 Transfer of Land Act 1958



- a. Erect, place, permit, licence or authorise on the land any buildings other than a single dwelling (together with usual outbuildings) such dwelling to contain a floor area of not less than 160m² within the outer walls thereof calculated by excluding the area of any carport, garage, terrace, pergola, porch or verandah;
- b. Erect, place, permit, licence or authorise on the land any building or outbuilding other than a building or outbuilding which is externally constructed of new materials save for second hand bricks;
- c. Erect, place, permit, licence or authorise on the land any building which is relocatable, or relocated from any other property.
- d. Erect, place, permit, licence or authorise on the land any boundary fence other than a post and wire or wire netting fence.
- e. Extract or remove or permit the extraction or removal of any soil, gravel or earth or other materials from the said land except for the purpose of excavating for the foundations of a building or of a swimming pool or tennis court or for gardening, landscaping or driveway within the said land.
- f. Permit the land or any part thereof to be used for the riding or driving of off road motorcycles or any other off road vehicles for recreation purposes.
- g. Permit the land or any part thereof to be used for the purpose of commercial breeding or boarding of or training kennels for cats or dogs or for the purpose of keeping roosters thereon.
- h. Permit the land to be used for the parking, garaging or servicing of any motor vehicle in excess of 5 tonnes gross vehicle mass (GVM) except for the purpose of loading or unloading of goods unless the vehicle is a vehicle engaged in construction works on the said land.
- i. Use or permit the use of the said land for any offensive or noxious purpose.
- j. Further subdivide the land in any way so as to create an additional Lot.

9801206A

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Page 2 of 3

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Land Victoria, 570 Bourke Street, Melbourne, 3000, Phone 8636-2010

TRANSFER OF LAND
Creating an Easement and/or
Restrictive Covenant
Section 45 Transfer of Land Act 1958

Dated:

Execution and attestation:

19/8/16

Executed by Nicholson River Pty Ltd ACN 140 839 710
 by being signed by the person/people authorised to sign for the company:

Director.....

Full name: Ross Charles Heath

Usual address: 10 ROBB STREET BAIRNSDALE

Director.....

Full name: Simon James Anderson

Usual address: 9 Bent Street BAIRNSDALE

Signed by the Transferee

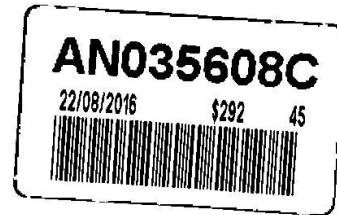
in the presence of: Mikhaela Rykers

LANDERS TRUEMAN BROOKE-KELLY

Witness.....

Mikhaela Rykers

RIVA JAIM BROOKE-KELLY



9801206A

Duty Use Only

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Page 3 of 3

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Land Victoria, 570 Bourke Street, Melbourne, 3000, Phone 8636-2010

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Application by a Responsible Authority for the making of a Recording of an Agreement

Section 181 **Planning and Environment Act 1987**

Form 18

AL961631J



Lodged by:

Name: **EASTCOAST CONVEYANCING**
 Phone: **MADDOCKS**
 Address: **9258-3655**
 Ref: **Level 6, 140 William Street, Melbourne, Victoria, 3000**
 Customer Code: **KAL:RTS:6237836 14-0683**
1107E 549U

The Authority having made an agreement referred to in section 181(1) of the **Planning and Environment Act 1987** requires a recording to be made in the Register for the land.

Land: Volume 11521 Folio 242

Authority: East Gippsland Shire Council of 273 Main Street, Bairnsdale, Victoria

Section and Act under which agreement made: Section 173 of the *Planning and Environment Act 1987*


A copy of the Agreement is attached to this Application

Signature for the Authority:

Name of officer:

Position Held:

Date:


 Sarah McLaughlin
 Senior Planner
 15/06/2015

[6237836: 14891885_1]

AL961631J

17/06/2015 \$121.50 173



Telephone 61 3 9258 3555

Facsimile 61 3 9258 3666

info@maddocks.com.au

www.maddocks.com.au

DX 259 Melbourne

**Agreement under section 173
of the Planning and Environment Act 1987**

Subject Land: 140 Nicholson-Sarsfield Road, Nicholson

East Gippsland Shire Council
and

Nicholson River Pty Ltd
ACN 140 839 710

[6237836: 13651855_2]

Interstate offices

Canberra Sydney

Affiliated offices around the world through the

Advoc network - www.advoc.com

AL961631J



Contents

1.	Definitions	1
2.	Interpretation	3
3.	Purposes of Agreement.....	3
4.	Reasons for Agreement.....	3
5.	Agreement required	4
6.	Owner's specific obligations.....	4
6.1	Rainwater Tanks	4
6.2	Fences	4
6.3	Access.....	4
6.4	Maintenance contribution for offsets.....	4
6.5	Building envelopes.....	5
6.6	Waste disposal envelopes	5
6.7	Septic tanks.....	5
7.	Owner's further obligations	5
7.1	Notice and registration	5
7.2	Further actions	5
7.3	Council's costs to be paid	5
7.4	Time for determining satisfaction	6
7.5	Interest for overdue money	6
7.6	Notification of compliance with Owner's obligations	6
8.	Agreement under s 173 of the Act	6
9.	Owner's warranties	6
10.	Successors in title.....	6
11.	General matters	6
11.1	Notices	6
11.2	No waiver	7
11.3	Severability.....	7
11.4	No fettering of Council's powers	7
11.5	Inspection of documents	7
11.6	Governing law	7
12.	Commencement of Agreement	7

AL961631J



Agreement under section 173 of the Planning and Environment Act 1987

Dated 15/06/2015

Parties

Name	East Gippsland Shire Council
Address	273 Main Street, Bairnsdale, Victoria
Short name	Council

Name	Nicholson River Pty Ltd ACN 140 839 710
Address	10 Robb Street, Bairnsdale, Victoria
Short name	Owner

Background

- A. Council is the responsible authority for the Planning Scheme.
- B. The Owner is or is entitled to be the registered proprietor of the Subject Land.
- C. Council issued the Planning Permit requiring the Owner to enter into this Agreement providing for the matters set out in conditions 5 and 38 of the Planning Permit.
- D. As at the date of this Agreement, the Subject Land is encumbered by a mortgage in favour of the Mortgagee. The Mortgagee consents to the Owner entering into this Agreement.

The Parties agree

1. Definitions

In this Agreement unless the context admits otherwise:

Act means the *Planning and Environment Act 1987*.

Agreement means this Agreement and includes this Agreement as amended from time to time.

Building and Waste Disposal Envelope means an area identified on the Endorsed Plan as a 'Building envelope' or the like.

Current Address means:

AL961631J



- (a) for Council, the address shown on page one of this Agreement, or any other address listed on Council's website; and
- (b) for the Owner, the address shown on page one of this Agreement or any other address provided by the Owner to Council for any purpose relating to the Subject Land.

Current Email means:

- (a) for Council, feedback@egipps.vic.gov.au, or any other email address listed on Council's website; and
- (b) for the Owner, any email address provided by the Owner to Council for the express purpose of electronic communication regarding this Agreement.

Dwelling has the same meaning as in the Planning Scheme.

Endorsed Plan means the plan endorsed with the stamp of Council from time to time as the plan which forms part of the Planning Permit.

Fence Design Plans means the fence design plans approved by Council from time to time.

Lot means a lot created by the subdivision of the Subject Land whether in accordance with the Planning Permit or otherwise.

Mortgagee means the person registered or entitled from time to time to be registered as mortgagee of the Subject Land.

Offset Maintenance Contribution means the amount agreed between the parties or, failing agreement after reasonable attempts by the parties, an amount determined by Council for the maintenance of the native vegetation offsets provided in the Reserve pursuant to clauses 14 and 41 of the Planning Permit.

Owner means the person registered or entitled from time to time to be registered as proprietor of an estate in fee simple of the Subject Land and includes a mortgagee-in-possession.

Owner's obligations includes the Owner's specific obligations and the Owner's further obligations.

Party or Parties means the Parties to this Agreement but does not include a person who has transferred or otherwise disposed of all of their interests in the Subject Land.

Planning Permit means planning permit no. 299/2011/P, as amended from time to time, issued on 20 March 2013, authorising the subdivision of the Subject Land and removal of vegetation in accordance with the Endorsed Plan.

Planning Scheme means the East Gippsland Planning Scheme and any other planning scheme that applies to the Subject Land.

Proposed Lot means a lot shown on the Endorsed Plan.

Rainwater Tank means the rainwater tank to be installed on a Lot.

Reserve means an area identified on the Endorsed Plan as any of 'Res 1', 'Res 2', 'Res 3', 'Res 4' or 'Public Purposes Reserve' or the like.

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Subject Land means the land situated at 140 Nicholson-Sarsfield Road, Nicholson being the land referred to in certificate of title volume 11521 folio 242 and any reference to the Subject Land includes any lot created by the subdivision of the Subject Land or any part of it.

2. Interpretation

In this Agreement unless the context admits otherwise:

- 2.1 the singular includes the plural and vice versa;
- 2.2 a reference to a gender includes all genders;
- 2.3 a reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law;
- 2.4 any agreement, representation, warranty or indemnity by 2 or more persons (including where 2 or more persons are included in the same defined term) binds them jointly and severally;
- 2.5 a term used has its ordinary meaning unless that term is defined in this Agreement. If a term is not defined in this Agreement and it is defined in the Act, it has the meaning as defined in the Act;
- 2.6 a reference to an Act, regulation or the Planning Scheme includes any Act, regulation or amendment amending, consolidating or replacing the Act, regulation or Planning Scheme;
- 2.7 the Background forms part of this Agreement;
- 2.8 the Owner's obligations take effect as separate and several covenants which are annexed to and run at law and equity with the Subject Land; and
- 2.9 any reference to a clause, page, condition, attachment or term is a reference to a clause, page, condition, attachment or term of this Agreement.

3. Purposes of Agreement

The Parties acknowledge and agree that the purposes of this Agreement are to:

- 3.1 give effect to the Planning Permit; and
- 3.2 achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

4. Reasons for Agreement

The Parties acknowledge and agree that Council has entered into this Agreement for the following reasons:

- 4.1 Council would not have issued the Planning Permit without the condition requiring this Agreement; and
- 4.2 the Owner has elected to enter into this Agreement in order to take the benefit of the Planning Permit.

AL961631J II

17/06/2015 \$121.50 173



5. Agreement required

The Parties agree that this Agreement will continue to be required until the Owner has complied with all of the Owner's obligations.

6. Owner's specific obligations

The Owner covenants and agrees that:

6.1 Rainwater Tanks

in the event that the development of a Lot includes the construction of a Dwelling:

6.1.1 the Owner must, at the Owner's full cost, install and maintain a Rainwater Tank on the Lot with a capacity of at least 10,000 litres to collect rainwater runoff from the roof of the Dwelling on the Lot

6.1.2 the Rainwater Tank must:

- (a) be used as the primary water source for:
 - (i) toilet flushing; and
 - (ii) laundry services; and
- (b) contain an external tap for garden irrigation purposes.

6.2 Fences

where a boundary fence on the Subject Land abuts a Reserve, the Owner must:

- 6.2.1 submit Fence Design Plans showing fences to a maximum height of 1.5 metres to Council for its written approval prior to construction of the fence;
- 6.2.2 construct the boundary fence in accordance with the approved Fence Design Plans;
- 6.2.3 thereafter maintain the boundary fence to ensure the fence remains of a similar height and style to the other boundary fences on the Subject Land abutting a Reserve; and
- 6.2.4 not construct or allow to be constructed, any gate in the boundary fence other than a pedestrian gate not exceeding 1.0 metre in width.

6.3 Access

the Owner must not create, or cause or permit the creation of, vehicle access to or from Proposed Lots 1, 2, 3, 8, 49 or 53 inclusive from the Nicholson-Sarsfield Road.

6.4 Maintenance contribution for offsets

the Owner must pay the Offset Maintenance Contribution to Council upon the vesting of the Reserve in Council.

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**6.5 Building envelopes**

the Owner must not build, construct or erect or cause or permit to be built, constructed or erected any Building outside a Building and Waste Disposal Envelope.

6.6 Waste disposal envelopes

unless with Council's prior written consent, the Owner must not dispose of, or cause or permit the disposal of, effluent on the Subject Land other than within a Building and Waste Disposal Envelope.

6.7 Septic tanks

the Owner must ensure that any septic tank system on the Subject Land includes:

- 6.7.1 secondary treatment of wastewater; and
- 6.7.2 disposal of treated wastewater by subsurface irrigation.

7. Owner's further obligations**7.1 Notice and registration**

The Owner must bring this Agreement to the attention of all prospective occupiers, purchasers, lessees, licensees, mortgagees, chargees, transferees and assigns.

7.2 Further actions

The Owner:

- 7.2.1 must do all things necessary to give effect to this Agreement;
- 7.2.2 consents to Council applying to the Registrar of Titles to record this Agreement on the certificate of title of the Subject Land in accordance with s 181 of the Act; and
- 7.2.3 agree to do all things necessary to enable Council to do so, including:
 - (a) sign any further agreement, acknowledgment or document; and
 - (b) obtain all necessary consents to enable the recording to be made.

7.3 Council's costs to be paid

The Owner must pay to Council within 14 days after a written request for payment, Council's costs and expenses (including legal expenses) relating to this Agreement, including:

- 7.3.1 preparing, drafting, finalising, signing, recording and enforcing this Agreement;
- 7.3.2 preparing, drafting, finalising and recording any amendment to this Agreement;
- 7.3.3 determining whether any of the Owner's obligations have been undertaken to Council's satisfaction; and
- 7.3.4 preparing, drafting, finalising and recording any document to give effect to the ending of this Agreement.

AL961631J**7.4 Time for determining satisfaction**

If Council makes a request for payment of any costs or expenses under clause 7.3.3, the Parties agree that Council will not decide whether the Owner's obligation has been undertaken to Council's satisfaction, or whether to grant the consent sought, until payment has been made to Council in accordance with the request.

7.5 Interest for overdue money

7.5.1 The Owner must pay to Council interest in accordance with s 227A of the *Local Government Act 1989* on any amount due under this Agreement that is not paid by the due date.

7.5.2 If interest is owing, Council will apply any payment made to interest and any balance of the payment to the principal amount.

7.6 Notification of compliance with Owner's obligations

The Owner must notify Council of its compliance with all of the Owner's obligations.

8. Agreement under s 173 of the Act

Without limiting or restricting the respective powers to enter into this Agreement, and insofar as it can be so treated, this Agreement is made as a deed in accordance with s 173 of the Act.

9. Owner's warranties

The Owner warrants that apart from the Owner and any other person who has consented in writing to this Agreement, no other person has any interest, either legal or equitable, in the Subject Land which may be affected by this Agreement.

10. Successors in title

Until such time as a memorandum of this Agreement is recorded on the certificate of title of the Subject Land, the Owner must require successors in title to:

- 10.1 give effect to this Agreement; and
- 10.2 enter into a deed agreeing to be bound by the terms of this Agreement.

11. General matters**11.1 Notices**

A notice or other communication required or permitted to be served by a Party on another Party must be in writing and may be served:

- 11.1.1 personally on the other Party;
- 11.1.2 by leaving it at the other Party's Current Address;

AL961631J

11.1.3 by posting it by prepaid post addressed to the other Party at the other Party's Current Address; or

11.1.4 by email to the other Party's Current Email.

11.2 No waiver

Any time or other indulgence granted by Council to the Owner or any variation of this Agreement or any judgment or order obtained by Council against the Owner does not amount to a waiver of any of Council's rights or remedies under this Agreement.

11.3 Severability

If a court, arbitrator, tribunal or other competent authority determines that any part of this Agreement is unenforceable, illegal or void then that part is severed with the other provisions of this Agreement remaining operative.

11.4 No fettering of Council's powers

This Agreement does not fetter or restrict Council's power or discretion to make decisions or impose requirements or conditions in connection with the grant of planning approvals or certification of plans subdividing the Subject Land or relating to use or development of the Subject Land.

11.5 Inspection of documents

A copy of any planning permit, document or plan referred to in this Agreement is available for inspection at Council offices during normal business hours upon giving the Council reasonable notice.

11.6 Governing law

This Agreement is governed by and is to be construed in accordance with the laws of Victoria.

12. Commencement of Agreement

This Agreement commences on the date specified on page one or if no date is specified on page one, the date Council executes this Agreement.

AL961631J

17/06/2015 \$121.50 173



Signing Page

Signed, sealed and delivered as a deed by the Parties.

Signed sealed and delivered by the Chief Executive Officer on behalf of the East Gippsland Shire Council pursuant to the power delegated to that person by an Instrument of Delegation in the presence of:

Witness

Colleen Smith

Print name

15-06-15

Executed by Nicholson River Pty Ltd ACN 140 839 710 in accordance with s 127(1) of the Corporations Act 2001:

Signature of Director

SIMON JAMES ANDERSON

Print full name

Signature of Director (or Company Secretary)

ROSS CHARLES HERTH

Print full name



Mortgagee's Consent

National Australia Bank Ltd as Mortgagee under instrument of mortgage no. AL493274P consents to the Owner entering into this Agreement and in the event that the Mortgagee becomes mortgagee-in-possession, agrees to be bound by the covenants and conditions of this Agreement.

.....

AL961631J

17/06/2015 \$121.50 173



Registrar of Titles
Land Titles Office
Marland House
570 Bourke Street
MELBOURNE

**APPLICATION TO REGISTER AN AGREEMENT UNDER SECTION 173 OF THE
PLANNING AND ENVIRONMENT ACT 1987**

Certificate of Title Volume 11521 Folio 242

Registered Proprietor: Nicholson River Pty Ltd ACN 140 839 710

National Australia Bank Limited A.B.N. 12 004 044 937 as Mortgagee pursuant to Registered Mortgage number AL493274P hereby consents to the within Agreement.

Dated this 27th day of May 2015

EXECUTED by **NATIONAL AUSTRALIA BANK LIMITED** by being signed sealed and delivered in Victoria by its Attorney

MICHAEL JAMES COOK
who holds the position of Level 3 Attorney under
Power of Attorney dated 1/3/2007 (a certified
copy of which is filed in Permanent Order Book
No 277 Page No 025 Item 35) in the presence of:

[illegible]



Attorney

Signature of Witness

Delivered by LANDATA®, timestamp 06/10/2021 15:01 Page 1 of 9

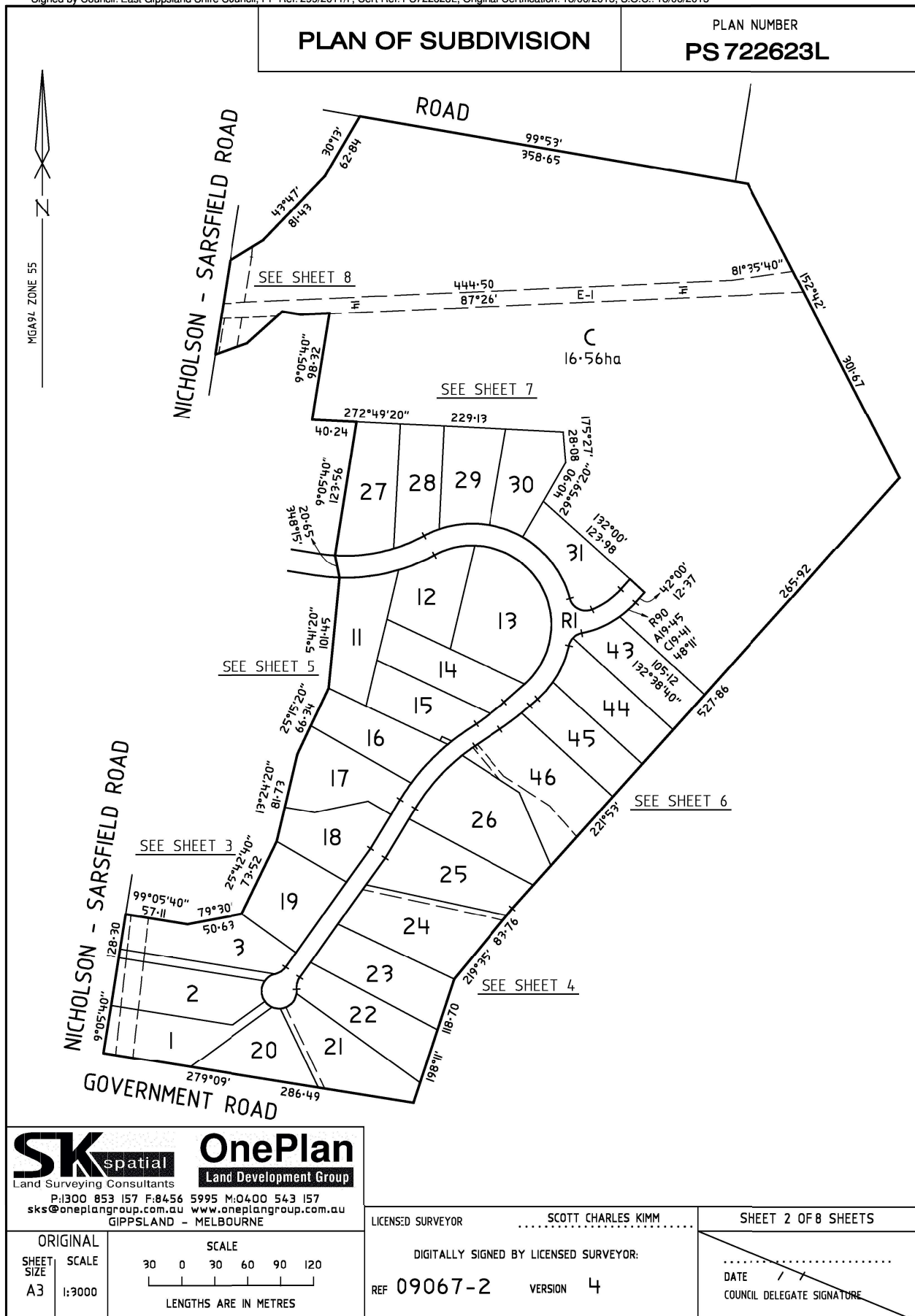
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Signed by Council: East Gippsland Shire Council, PP Ref: 299/2011/P, Cert Ref: PS722623L, Original Certification: 18/06/2015, S.O.C.: 18/06/2015

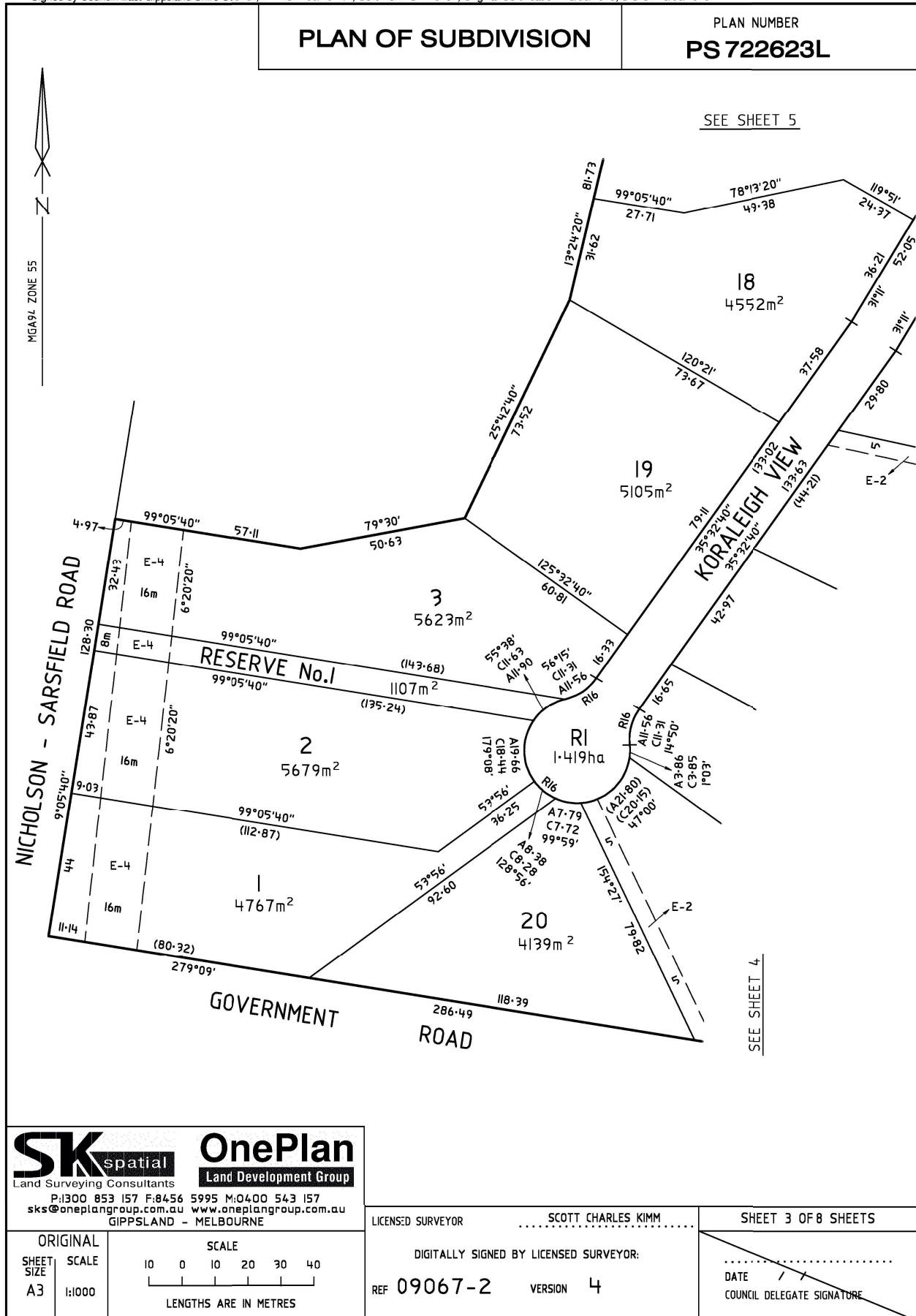
PLAN OF SUBDIVISION				LV USE ONLY EDITION 1	PLAN NUMBER PS 722623L																				
Location of Land Parish: Sarsfield Township: - Section: 2 Crown Allotment: 4A1 (part) Crown Portion: - Title References: V. 11582 F. 828 Last Plan Reference: Lot B on PS722606L Postal Address: Nicholson - Sarsfield Road, <small>(at time of subdivision)</small> Nicholson 3882 MGA 94 Co-ordinates: E 565 900 <small>(of approx. centre of plan)</small> N 5815 700 Zone: 55				Council Certification and Endorsement Council Name: East Gippsland Shire Council Ref: 1. This plan is certified under Section 6 of the Subdivision Act 1988. 2. This plan is certified under Section 11(7) of the Subdivision Act 1988. Date of original certification under Section 6 / / / 3. This is a statement of compliance issued under Section 21 of the Subdivision Act 1988. Open Space (i) A requirement for public open space under Section 18 Subdivision Act 1988 has / has not been made. (ii) The requirement has been satisfied. (iii) The requirement is to be satisfied in stage Council Delegate Council seal Date / / / Re-certified under Section 11(7) of the Subdivision Act 1988 Council Delegate Council seal Date / / /																					
Vesting of Roads or Reserves				Notations																					
Identifier		Council/Body/Person		Staging This is / is not a staged subdivision Planning Permit No 299/2011/P																					
Road - R1 Reserve No.1 Reserve No.2		East Gippsland Shire Council East Gippsland Shire Council AusNet Electricity Services Pty Ltd		Depth Limitation Does not apply Lots A, B, 4-10 and 32-42 have been omitted from this plan. WATERWAY NOTATION: LOTS 21, 22, 23, 26, 43, 44, 45, 46 AND LOT C IN THIS PLAN MAY ABUT CROWN LAND THAT MAY BE SUBJECT TO A CROWN LICENCE TO USE Survey: This plan is / is not based on survey This plan has been connected to permanent mark no(s). PM32, PM37, PM38 This is a SPEAR plan																					
Easement Information				LRS USE ONLY																					
Legend A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)				STATEMENT OF COMPLIANCE / EXEMPTION STATEMENT																					
<table border="1"> <thead> <tr> <th>Easement Reference</th> <th>Purpose</th> <th>Width (Metres)</th> <th>Origin</th> <th>Land Benefited/In Favour Of</th> </tr> </thead> <tbody> <tr> <td>E-1</td> <td>Transmission of Electricity</td> <td>See diag.</td> <td>C/E M880918M</td> <td>S.E.C of Victoria</td> </tr> <tr> <td>E-2</td> <td>Drainage</td> <td>See diag.</td> <td>This Plan</td> <td>East Gippsland Shire Council & Land in this Plan</td> </tr> <tr> <td>E-4</td> <td>Powerline</td> <td>See diag.</td> <td>PS715883X - Section 88 Electricity Industry Act 2000</td> <td>SPI Electricity Pty Ltd</td> </tr> </tbody> </table>				Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of	E-1	Transmission of Electricity	See diag.	C/E M880918M	S.E.C of Victoria	E-2	Drainage	See diag.	This Plan	East Gippsland Shire Council & Land in this Plan	E-4	Powerline	See diag.	PS715883X - Section 88 Electricity Industry Act 2000	SPI Electricity Pty Ltd	RECEIVED <input checked="" type="checkbox"/> DATE 22/6/2015 PLAN REGISTERED TIME: 12:20 PM DATE: 9/7/2015 BILL SKALITSIS Assistant Registrar of Titles SHEET 1 OF 8 SHEETS	
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of																					
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 				LICENSED SURVEYOR SCOTT CHARLES KIMM DIGITALLY SIGNED BY LICENSED SURVEYOR: REF 09067-2 VERSION 4 DATE / / / COUNCIL DELEGATE SIGNATURE ORIGINAL SHEET SIZE A3																					

Signed by: Scott Charles Kimm (SK Spatial) Surveyor's Plan Version (4) SPEAR Ref: S058861V 08/05/2015

Signed by Council: East Gippsland Shire Council, PP Ref: 299/2011/P, Cert Ref: PS722623L, Original Certification: 18/06/2015, S.O.C.: 18/06/2015

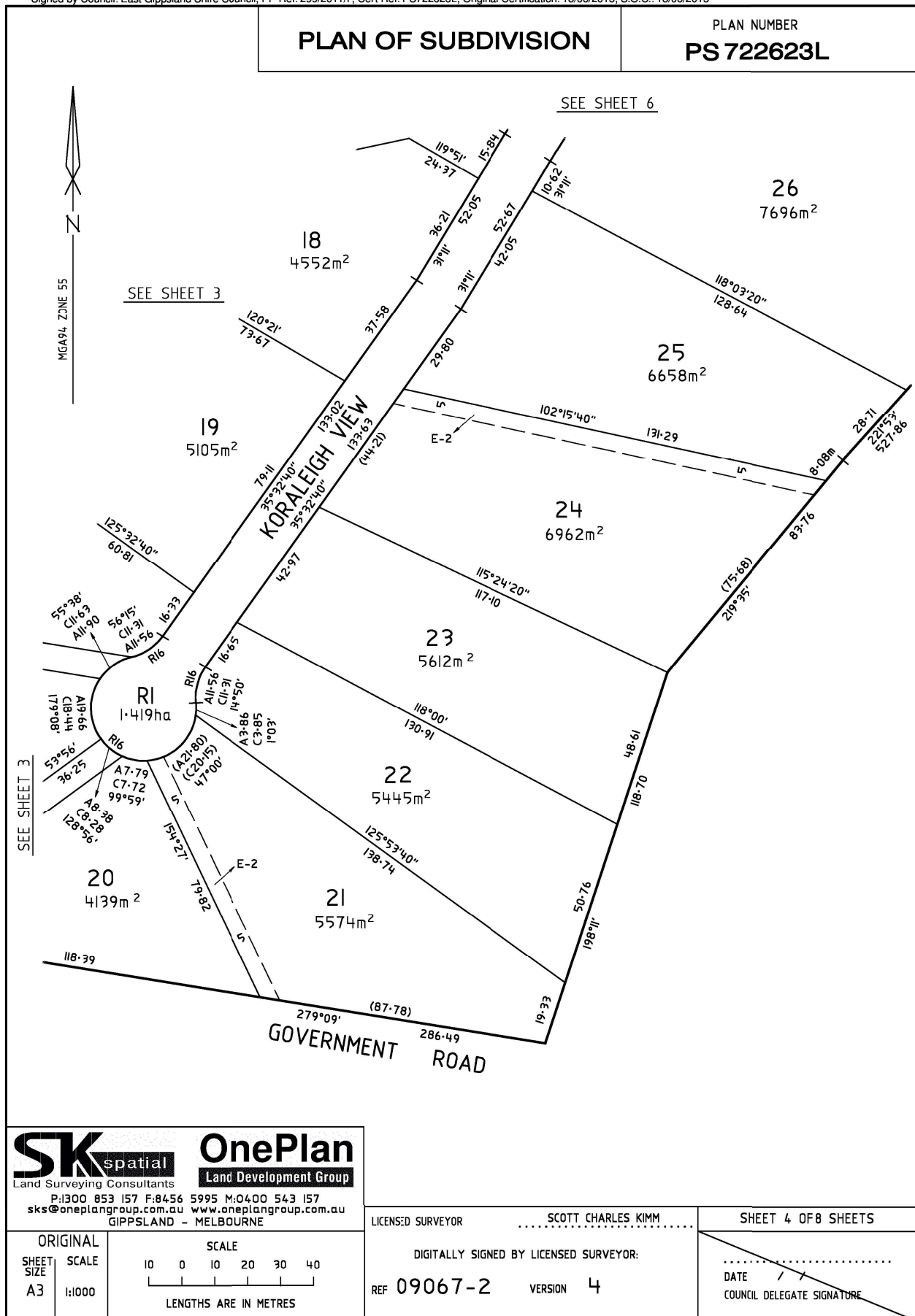


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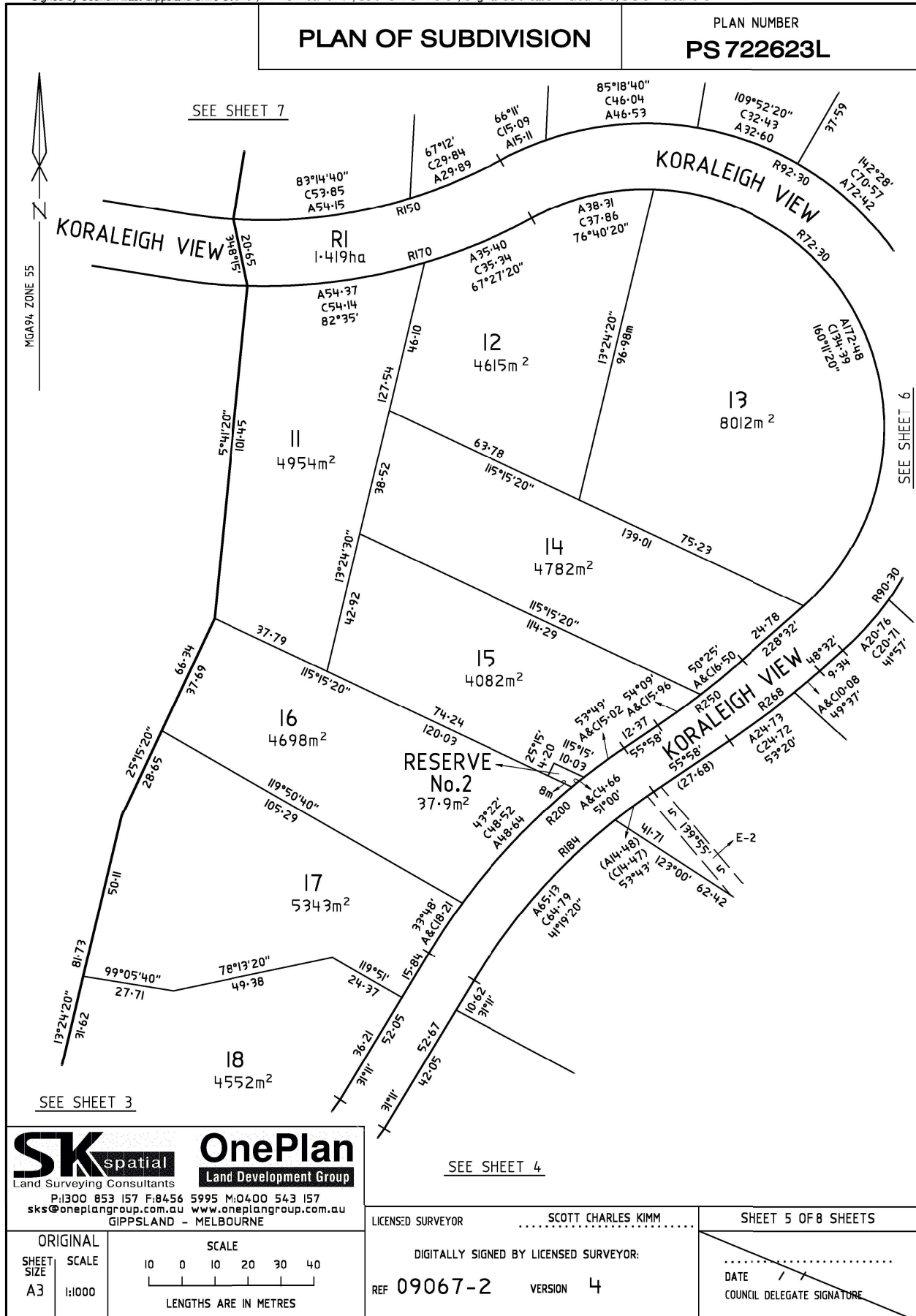


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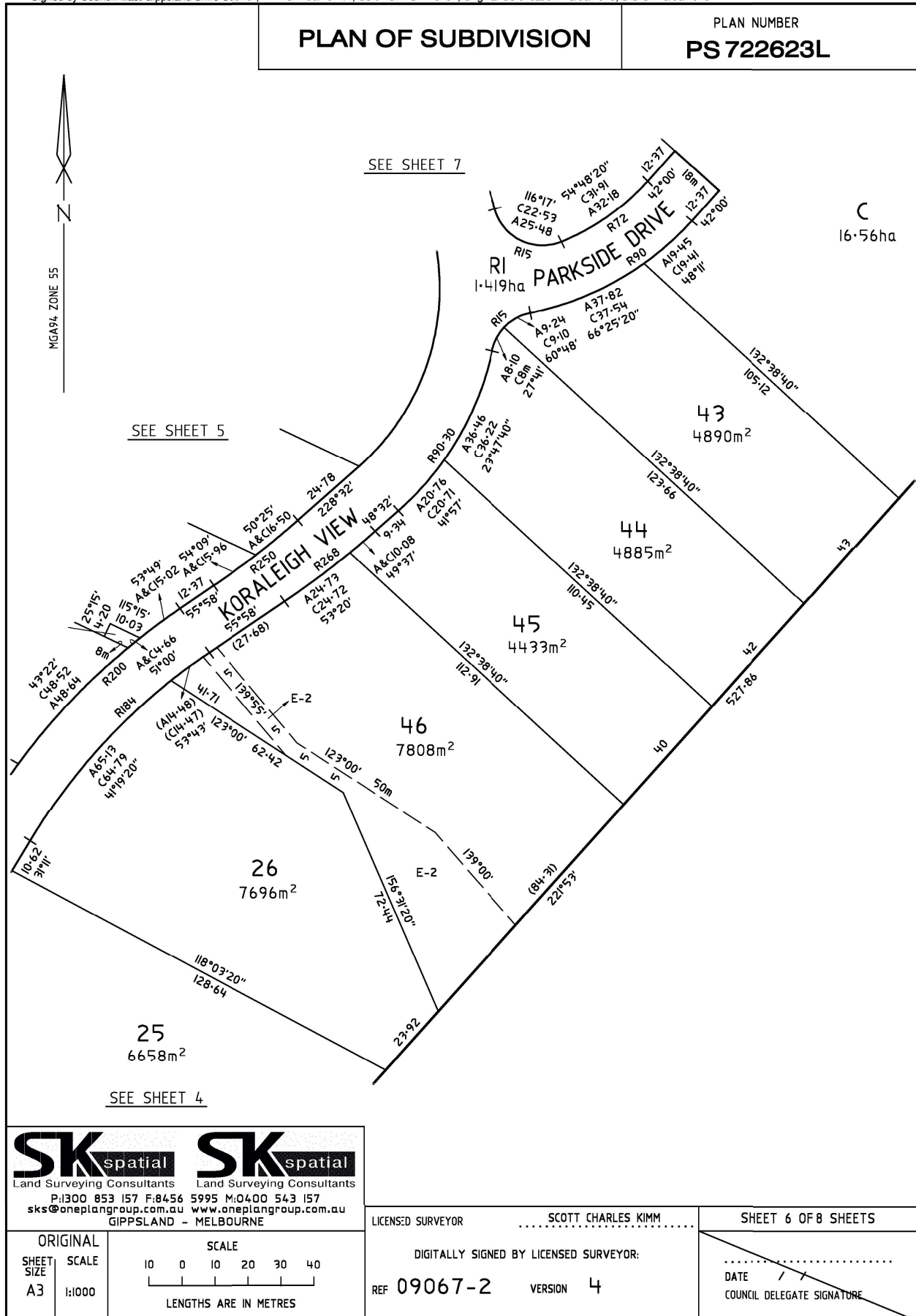


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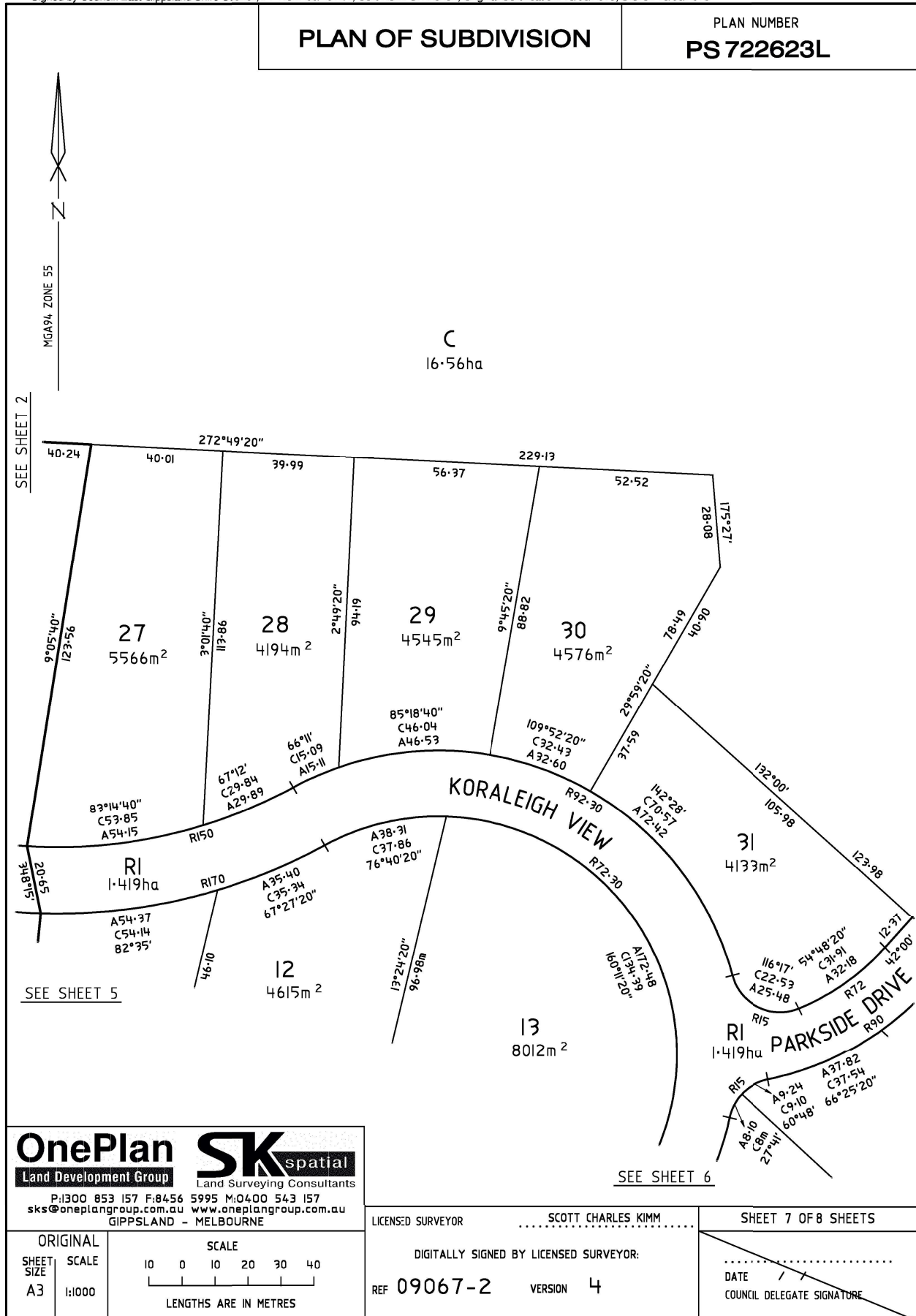


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Signed by Council: East Gippsland Shire Council, PP Ref: 299/2011/P, Cert Ref: PS722623L, Original Certification: 18/06/2015, S.O.C.: 18/06/2015

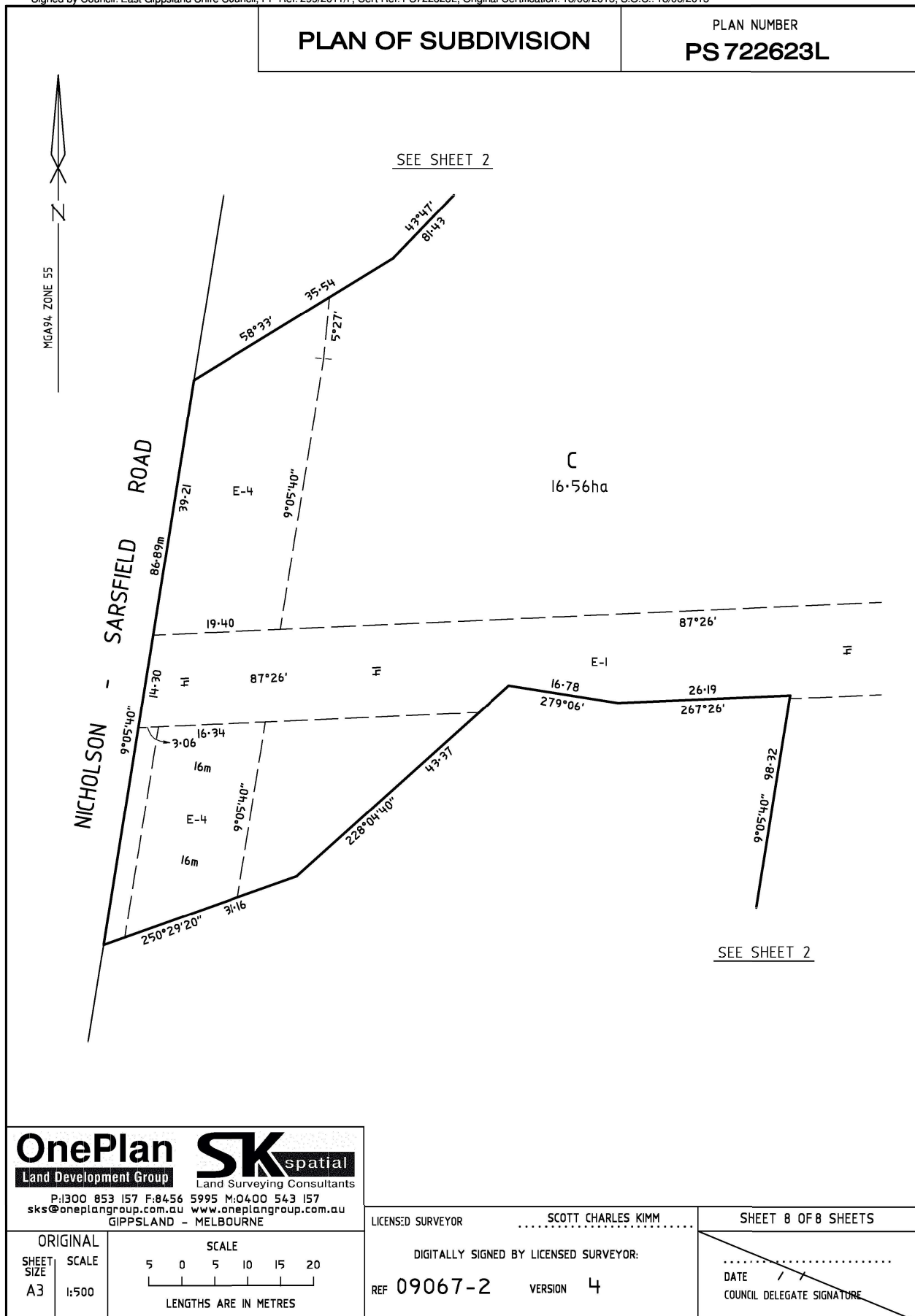


Signed by Council: East Gippsland Shire Council, PP Ref: 299/2011/P, Cert Ref: PS722623L, Original Certification: 18/06/2015, S.O.C.: 18/06/2015



Signed by: Scott Charles Kimm (SK Spatial) Surveyor's Plan Version (4) SPEAR Ref: S058861V 08/05/2015

Signed by Council: East Gippsland Shire Council, PP Ref: 299/2011/P, Cert Ref: PS722623L, Original Certification: 18/06/2015, S.O.C.: 18/06/2015



Signed by: Scott Charles Kimm (SK Spatial) Surveyor's Plan Version (4) SPEAR Ref: S058861V 08/05/2015

Plan of Subdivision PS722623L
Concurrent Certification and Statement of Compliance
(Form 3)

SUBDIVISION (PROCEDURES) REGULATIONS 2011

SPEAR Reference Number: S058861V
Plan Number: PS722623L
Responsible Authority Name: East Gippsland Shire Council
Responsible Authority Permit Ref. No.: 299/2011/P
Responsible Authority Certification Ref. No.: PS722623L
Surveyor's Plan Version: 4

Certification

☒ This plan is certified under section 6 of the Subdivision Act 1988

Statement of Compliance

☒ This is a statement of compliance issued under section 21 of the Subdivision Act 1988

Public Open Space

A requirement for public open space under section 18 of the Subdivision Act 1988

☐ Has not been made at Certification

Digitally signed by Council Delegate: Sarah McLaughlin
Organisation: East Gippsland Shire Council
Date: 18/06/2015

Signed by: Sarah Marie McLaughlin (East Gippsland Shire Council) 18/06/2015

Date / /

**Agreement under section 173
of the Planning and Environment Act 1987**
Subject Land: 40 Koraleigh View, Nicholson

East Gippsland Shire Council
and

John Andrew Holzer

Contents

1.	Definitions	1
2.	Interpretation	3
3.	Purposes of Agreement.....	3
4.	Reasons for Agreement.....	3
5.	Agreement required	4
6.	Owner's specific obligations	4
6.1	Rainwater Tanks	4
6.2	Fences	4
6.3	Access	4
6.4	Maintenance contribution for offsets.....	4
6.5	Building envelopes.....	5
6.6	Waste disposal envelope.....	5
6.7	Septic Tanks	5
7.	Owner's further obligations	5
7.1	Notice and registration	5
7.2	Further actions	5
7.3	Council's costs to be paid	5
7.4	Time for determining satisfaction	6
7.5	Interest for overdue money	6
7.6	Notification of compliance with Owner's obligations	6
8.	Agreement under section 173 of the Act	6
9.	Owner's warranties	6
10.	Successors in title	6
11.	General matters	6
11.1	Notices	6
11.2	No waiver	7
11.3	Severability	7
11.4	No fettering of Council's powers	7
11.5	Inspection of documents	7
11.6	Governing law	7
12.	Commencement of Agreement.....	7

Agreement under section 173 of the Planning and Environment Act 1987

Dated / /

Parties

Name	East Gippsland Shire Council
Address	273 Main Street, Bairnsdale, Victoria
Short name	Council

Name	John Andrew Holzer
Address	40 Koraleigh View, Nicholson, Victoria
Short name	Owner

Background

- A. Council is the responsible authority for the Planning Scheme.
- B. The Owner is or is entitled to be the registered proprietor of the Subject Land.
- C. Council issued the Planning Permit requiring the Owner to enter into this Agreement providing for the matters set out in conditions 5 and 38 of the Planning Permit.
- D. As at the date of this Agreement, the Subject Land is encumbered by a mortgage in favour of the Mortgagee. The Mortgagee consents to the Owner entering into this Agreement.

The Parties agree

1. Definitions

In this Agreement unless the context admits otherwise:

Act means the *Planning and Environment Act 1987*.

Agreement means this Agreement and includes this Agreement as amended from time to time.

Building and Waste Disposal Envelope means the area which is identified on the Endorsed Plan as a 'Building Envelope' or the like.

Current Address means:

- (a) for Council, the address shown on page one of this Agreement, or any other address listed on Council's website; and
- (b) for the Owner, the address shown on page one of this Agreement or any other address provided by the Owner to Council for any purpose relating to the Subject Land.

Current Email means:

- (a) for Council, feedback@egipps.vic.gov.au, or any other email address listed on Council's website; and
- (b) for the Owner, any email address provided by the Owner to Council for the express purpose of electronic communication regarding this Agreement.

Dwelling has the same meaning as in the Planning Scheme.

Endorsed Plan means the plan endorsed with the stamp of Council from time to time as the plan which forms part of the Planning Permit.

Fence Design Plans means the fence design plans approved by Council from time to time.

Lot means a lot created by the subdivision of the Subject Land whether in accordance with the Planning Permit or otherwise.

Mortgagee means the person registered or entitled from time to time to be registered as mortgagee of the Subject Land or any part of it.

Offset Maintenance Contribution means the amount agreed between the parties or, failing agreement after reasonable attempts by the parties, an amount determined by Council for the maintenance of the native vegetation offsets provided in the Reserve pursuant to clauses 14 and 41 of the Planning Permit.

Owner means the person registered or entitled from time to time to be registered as proprietor of an estate in fee simple of the Subject Land and includes a mortgagee-in-possession.

Owner's obligations includes the Owner's specific obligations and the Owner's further obligations.

Party or Parties means the Parties to this Agreement but does not include a person who has transferred or otherwise disposed of all of their interests in the Subject Land.

Planning Permit means planning permit No. 299/2011/P, as amended from time to time, issued on 20 March 2013, authorising the subdivision of the Subject Land and removal of vegetation in accordance with the Endorsed Plan.

Planning Scheme means the East Gippsland Planning Scheme and any other planning scheme that applies to the Subject Land.

Proposed Lot means a lot shown on the Endorsed Plan.

Rainwater Tank means the rainwater tank to be installed on a Lot.

Reserve means an area identified on the Endorsed Plan as any of 'Res 1', 'Res 2', 'Res 3', 'Res4' or 'Public Purposes Reserve' or the like.

Subject Land means the land situated at 40 Koraleigh View, Nicholson being the land referred to in certificate of title volume 11582 folio 864 and any reference to the Subject Land includes any lot created by the subdivision of the Subject Land or any part of it.

2. Interpretation

In this Agreement unless the context admits otherwise:

- 2.1 the singular includes the plural and vice versa;
- 2.2 a reference to a gender includes all genders;
- 2.3 a reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law;
- 2.4 any agreement, representation, warranty or indemnity by 2 or more persons (including where 2 or more persons are included in the same defined term) binds them jointly and severally;
- 2.5 a term used has its ordinary meaning unless that term is defined in this Agreement. If a term is not defined in this Agreement and it is defined in the Act, it has the meaning as defined in the Act;
- 2.6 a reference to an Act, regulation or the Planning Scheme includes any Act, regulation or amendment amending, consolidating or replacing the Act, regulation or Planning Scheme;
- 2.7 the Background forms part of this Agreement;
- 2.8 the Owner's obligations take effect as separate and several covenants which are annexed to and run at law and equity with the Subject Land; and
- 2.9 any reference to a clause, page, condition, attachment or term is a reference to a clause, page, condition, attachment or term of this Agreement.

3. Purposes of Agreement

The Parties acknowledge and agree that the purposes of this Agreement are to:

- 3.1 give effect to the Planning Permit; and
- 3.2 achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

4. Reasons for Agreement

The Parties acknowledge and agree that Council has entered into this Agreement for the following reasons:

- 4.1 Council would not have issued the Planning Permit without the condition requiring this Agreement; and
- 4.2 the Owner has elected to enter into this Agreement in order to take the benefit of the Planning Permit.

5. Agreement required

The Parties agree that this Agreement will continue to be required until the Owner has complied with all of the Owner's Obligations.

6. Owner's specific obligations

The Owner covenants and agrees that:

6.1 Rainwater Tanks

in the event that the development of a Lot includes the construction of a Dwelling:

6.1.1 the Owner must, at the Owner's full cost, install and maintain a Rainwater Tank on the Lot with a capacity of at least 10,000 litres to collect rainwater runoff from the roof of the Dwelling on the Lot

6.1.2 the Rainwater Tank must:

a) be used as the primary water source for:

(i) toilet flushing; and

(ii) laundry services; and

b) contain an external tap for garden irrigation purposes.

6.2 Fences

where a boundary fence on the Subject Land abuts a Reserve, the Owner must:

6.2.1 submit Fence Design Plans showing fences to a maximum height of 1.5 metres to Council for its written approval prior to construction of the fence;

6.2.2 construct the boundary fence in accordance with the approved Fence Design Plans;

6.2.3 thereafter maintain the boundary fence to ensure the fence remains of a similar height and style to the other boundary fences on the Subject Land abutting a Reserve; and

6.2.4 not construct or allow to be constructed, any gate in the boundary fence other than a pedestrian gate not exceeding 1.0 metre in width.

6.3 Access

the Owner must not create, or cause or permit the creation of, vehicle access to or from Proposed Lots 1, 2, 3, 8, 49 or 53 inclusive from the Nicholson-Sarsfield Road.

6.4 Maintenance contribution for offsets

the Owner must pay the Offset Maintenance Contribution to Council upon the vesting of the Reserve in Council.

6.5 Building envelopes

Unless with Council's prior written consent, the Owner must not build, construct or erect or cause or permit to be built, constructed or erected any Building outside a Building and Waste Disposal Envelope.

6.6 Waste disposal envelope

Unless with Council's prior written consent, the Owner must not dispose of, or cause or permit the disposal of, effluent on the Subject Land other than within a Building and Waste Disposal Envelope.

6.7 Septic Tanks

the Owner must ensure that any septic tank system on the Subject Land includes:

- 6.7.1 secondary treatment of wastewater; and
- 6.7.2 disposal of treated wastewater by subsurface irrigation.

7. Owner's further obligations
7.1 Notice and registration

The Owner must bring this Agreement to the attention of all prospective occupiers, purchasers, lessees, licensees, mortgagees, chargees, transferees and assigns.

7.2 Further actions

The Owner:

- 7.2.1 must do all things necessary to give effect to this Agreement;
- 7.2.2 consents to Council applying to the Registrar of Titles to record this Agreement on the certificate of title of the Subject Land in accordance with s 181 of the Act; and
- 7.2.3 agree to do all things necessary to enable Council to do so, including:
 - (a) sign any further agreement, acknowledgment or document; and
 - (b) obtain all necessary consents to enable the recording to be made.

7.3 Council's costs to be paid

The Owner must pay to Council within 14 days after a written request for payment, Council's costs and expenses (including legal expenses) relating to this Agreement, including:

- 7.3.1 preparing, drafting, finalising, signing, recording and enforcing this Agreement;
- 7.3.2 preparing, drafting, finalising and recording any amendment to this Agreement;
- 7.3.3 determining whether any of the Owner's obligations have been undertaken to Council's satisfaction; and
- 7.3.4 preparing, drafting, finalising and recording any document to give effect to the ending of this Agreement.

7.4 Time for determining satisfaction

If Council makes a request for payment of any costs or expenses under Clause 7.3.3, the Parties agree that Council will not decide whether the Owner's obligation has been undertaken to Council's satisfaction, or whether to grant the consent sought, until payment has been made to Council in accordance with the request.

7.5 Interest for overdue money

7.5.1 The Owner must pay to Council interest in accordance with s 227A of the *Local Government Act* 1989 on any amount due under this Agreement that is not paid by the due date.

7.5.2 If interest is owing, Council will apply any payment made to interest and any balance of the payment to the principal amount.

7.6 Notification of compliance with Owner's obligations

The Owner must notify Council of its compliance with all of the Owner's obligations.

8. Agreement under section 173 of the Act

Without limiting or restricting the respective powers to enter into this Agreement, and insofar as it can be so treated, this Agreement is made as a deed in accordance with s 173 of the Act.

9. Owner's warranties

The Owner warrants that apart from the Owner and any other person who has consented in writing to this Agreement, no other person has any interest, either legal or equitable, in the Subject Land which may be affected by this Agreement.

10. Successors in title

Until such time as a memorandum of this Agreement is recorded on the certificate of title of the Subject Land, the Owner must require successors in title to:

- 10.1 give effect to this Agreement; and
- 10.2 enter into a deed agreeing to be bound by the terms of this Agreement.

11. General matters
11.1 Notices

A notice or other communication required or permitted to be served by a Party on another Party must be in writing and may be served:

- 11.1.1 personally on the other Party;
- 11.1.2 by leaving it at the other Party's Current Address;

11.1.3 by posting it by prepaid post addressed to the other Party at the other Party's Current Address; or

11.1.4 by email to the other Party's Current Email.

11.2 No waiver

Any time or other indulgence granted by Council to the Owner or any variation of this Agreement or any judgment or order obtained by Council against the Owner does not amount to a waiver of any of Council's rights or remedies under this Agreement.

11.3 Severability

If a court, arbitrator, tribunal or other competent authority determines that any part of this Agreement is unenforceable, illegal or void then that part is severed with the other provisions of this Agreement remaining operative.

11.4 No fettering of Council's powers

This Agreement does not fetter or restrict Council's power or discretion to make decisions or impose requirements or conditions in connection with the grant of planning approvals or certification of plans subdividing the Subject Land or relating to use or development of the Subject Land.

11.5 Inspection of documents

A copy of any planning permit, document or plan referred to in this Agreement is available for inspection at Council offices during normal business hours upon giving the Council reasonable notice.

11.6 Governing law

This Agreement is governed by and is to be construed in accordance with the laws of Victoria.

12. Commencement of Agreement

This Agreement commences on the date specified on page one or if no date is specified on page one, the date Council executes this Agreement.

Signing Page

Signed, sealed and delivered as a deed by the Parties.

The Common Seal of the East Gippsland Shire Council was hereunto affixed on the day of , in the presence of:

..... Chief Executive

..... Witness

Signed Sealed and Delivered by John Andrew Holzer in the presence of:))

.....
Witness

Mortgagee's Consent

Perpetual Trustee Company Limited as Mortgagee under Instrument of mortgage No. AT578226K consents to the Owner entering into this Agreement and in the event that the Mortgagee becomes mortgagee-in-possession, agrees to be bound by the covenants and conditions of this Agreement.

.....

Delivered by LANDATA®, timestamp 02/02/2021 09:14 - Page 1 of 13

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Application by a Responsible Authority for the making of a Recording of an Agreement

Section 181 Planning and Environment Act 1987

AL961631J



Form 18

Lodged by:

Name: EASTCOAST CONVEYANCING
 Phone: MADDOCKS
 Address: 9258-3655
 Ref: Level 6, 140 William Street, Melbourne, Victoria, 3000
 Customer Code: KAL:RTS:6237836 14-0683
 1107E 549U

The Authority having made an agreement referred to in section 181(1) of the **Planning and Environment Act 1987** requires a recording to be made in the Register for the land.

Land: Volume 11521 Folio 242

Authority: East Gippsland Shire Council of 273 Main Street, Bairnsdale, Victoria

Section and Act under which agreement made: Section 173 of the *Planning and Environment Act 1987*


A copy of the Agreement is attached to this Application

Signature for the Authority:

Name of officer:

Position Held:

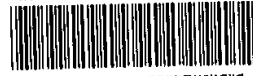
Date:


 Sarah McLaughlin
 Senior Planner
 15/06/2015

[6237836: 14891885_1]

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17/06/2015 \$121.50 173



Telephone 61 3 9258 3555
Facsimile 61 3 9258 3666

info@maddocks.com.au
www.maddocks.com.au

DX 259 Melbourne

**Agreement under section 173
of the Planning and Environment Act 1987**
Subject Land: 140 Nicholson-Sarsfield Road, Nicholson

East Gippsland Shire Council
and

Nicholson River Pty Ltd
ACN 140 839 710

[6237836: 13651855_2]

Interstate offices
Canberra Sydney
Affiliated offices around the world through the
Advoc network - www.advoc.com

AL961631J

Contents

1.	Definitions	1
2.	Interpretation	3
3.	Purposes of Agreement.....	3
4.	Reasons for Agreement.....	3
5.	Agreement required	4
6.	Owner's specific obligations.....	4
6.1	Rainwater Tanks	4
6.2	Fences	4
6.3	Access.....	4
6.4	Maintenance contribution for offsets.....	4
6.5	Building envelopes.....	5
6.6	Waste disposal envelopes	5
6.7	Septic tanks.....	5
7.	Owner's further obligations	5
7.1	Notice and registration	5
7.2	Further actions	5
7.3	Council's costs to be paid	5
7.4	Time for determining satisfaction.....	6
7.5	Interest for overdue money.....	6
7.6	Notification of compliance with Owner's obligations	6
8.	Agreement under s 173 of the Act.....	6
9.	Owner's warranties	6
10.	Successors in title.....	6
11.	General matters	6
11.1	Notices	6
11.2	No waiver	7
11.3	Severability.....	7
11.4	No fettering of Council's powers	7
11.5	Inspection of documents	7
11.6	Governing law	7
12.	Commencement of Agreement.....	7

AL961631J



Agreement under section 173 of the Planning and Environment Act 1987

Dated 15/06/2015

Parties

Name	East Gippsland Shire Council
Address	273 Main Street, Bairnsdale, Victoria
Short name	Council

Name	Nicholson River Pty Ltd ACN 140 839 710
Address	10 Robb Street, Bairnsdale, Victoria
Short name	Owner

Background

- A. Council is the responsible authority for the Planning Scheme.
- B. The Owner is or is entitled to be the registered proprietor of the Subject Land.
- C. Council issued the Planning Permit requiring the Owner to enter into this Agreement providing for the matters set out in conditions 5 and 38 of the Planning Permit.
- D. As at the date of this Agreement, the Subject Land is encumbered by a mortgage in favour of the Mortgagee. The Mortgagee consents to the Owner entering into this Agreement.

The Parties agree

1. Definitions

In this Agreement unless the context admits otherwise:

Act means the *Planning and Environment Act 1987*.

Agreement means this Agreement and includes this Agreement as amended from time to time.

Building and Waste Disposal Envelope means an area identified on the Endorsed Plan as a 'Building envelope' or the like.

Current Address means:

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- (a) for Council, the address shown on page one of this Agreement, or any other address listed on Council's website; and
- (b) for the Owner, the address shown on page one of this Agreement or any other address provided by the Owner to Council for any purpose relating to the Subject Land.

Current Email means:

- (a) for Council, feedback@egipps.vic.gov.au, or any other email address listed on Council's website; and
- (b) for the Owner, any email address provided by the Owner to Council for the express purpose of electronic communication regarding this Agreement.

Dwelling has the same meaning as in the Planning Scheme.

Endorsed Plan means the plan endorsed with the stamp of Council from time to time as the plan which forms part of the Planning Permit.

Fence Design Plans means the fence design plans approved by Council from time to time.

Lot means a lot created by the subdivision of the Subject Land whether in accordance with the Planning Permit or otherwise.

Mortgagee means the person registered or entitled from time to time to be registered as mortgagee of the Subject Land.

Offset Maintenance Contribution means the amount agreed between the parties or, failing agreement after reasonable attempts by the parties, an amount determined by Council for the maintenance of the native vegetation offsets provided in the Reserve pursuant to clauses 14 and 41 of the Planning Permit.

Owner means the person registered or entitled from time to time to be registered as proprietor of an estate in fee simple of the Subject Land and includes a mortgagee-in-possession.

Owner's obligations includes the Owner's specific obligations and the Owner's further obligations.

Party or Parties means the Parties to this Agreement but does not include a person who has transferred or otherwise disposed of all of their interests in the Subject Land.

Planning Permit means planning permit no. 299/2011/P, as amended from time to time, issued on 20 March 2013, authorising the subdivision of the Subject Land and removal of vegetation in accordance with the Endorsed Plan.

Planning Scheme means the East Gippsland Planning Scheme and any other planning scheme that applies to the Subject Land.

Proposed Lot means a lot shown on the Endorsed Plan.

Rainwater Tank means the rainwater tank to be installed on a Lot.

Reserve means an area identified on the Endorsed Plan as any of 'Res 1', 'Res 2', 'Res 3', 'Res 4' or 'Public Purposes Reserve' or the like.

AL961631J

Subject Land means the land situated at 140 Nicholson-Sarsfield Road, Nicholson being the land referred to in certificate of title volume 11521 folio 242 and any reference to the Subject Land includes any lot created by the subdivision of the Subject Land or any part of it.

2. Interpretation

In this Agreement unless the context admits otherwise:

- 2.1 the singular includes the plural and vice versa;
- 2.2 a reference to a gender includes all genders;
- 2.3 a reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law;
- 2.4 any agreement, representation, warranty or indemnity by 2 or more persons (including where 2 or more persons are included in the same defined term) binds them jointly and severally;
- 2.5 a term used has its ordinary meaning unless that term is defined in this Agreement. If a term is not defined in this Agreement and it is defined in the Act, it has the meaning as defined in the Act;
- 2.6 a reference to an Act, regulation or the Planning Scheme includes any Act, regulation or amendment amending, consolidating or replacing the Act, regulation or Planning Scheme;
- 2.7 the Background forms part of this Agreement;
- 2.8 the Owner's obligations take effect as separate and several covenants which are annexed to and run at law and equity with the Subject Land; and
- 2.9 any reference to a clause, page, condition, attachment or term is a reference to a clause, page, condition, attachment or term of this Agreement.

3. Purposes of Agreement

The Parties acknowledge and agree that the purposes of this Agreement are to:

- 3.1 give effect to the Planning Permit; and
- 3.2 achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

4. Reasons for Agreement

The Parties acknowledge and agree that Council has entered into this Agreement for the following reasons:

- 4.1 Council would not have issued the Planning Permit without the condition requiring this Agreement; and
- 4.2 the Owner has elected to enter into this Agreement in order to take the benefit of the Planning Permit.

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5. Agreement required

The Parties agree that this Agreement will continue to be required until the Owner has complied with all of the Owner's obligations.

6. Owner's specific obligations

The Owner covenants and agrees that:

6.1 Rainwater Tanks

in the event that the development of a Lot includes the construction of a Dwelling:

6.1.1 the Owner must, at the Owner's full cost, install and maintain a Rainwater Tank on the Lot with a capacity of at least 10,000 litres to collect rainwater runoff from the roof of the Dwelling on the Lot

6.1.2 the Rainwater Tank must:

- (a) be used as the primary water source for:
 - (i) toilet flushing; and
 - (ii) laundry services; and
- (b) contain an external tap for garden irrigation purposes.

6.2 Fences

where a boundary fence on the Subject Land abuts a Reserve, the Owner must:

- 6.2.1 submit Fence Design Plans showing fences to a maximum height of 1.5 metres to Council for its written approval prior to construction of the fence;
- 6.2.2 construct the boundary fence in accordance with the approved Fence Design Plans;
- 6.2.3 thereafter maintain the boundary fence to ensure the fence remains of a similar height and style to the other boundary fences on the Subject Land abutting a Reserve; and
- 6.2.4 not construct or allow to be constructed, any gate in the boundary fence other than a pedestrian gate not exceeding 1.0 metre in width.

6.3 Access

the Owner must not create, or cause or permit the creation of, vehicle access to or from Proposed Lots 1, 2, 3, 8, 49 or 53 inclusive from the Nicholson-Sarsfield Road.

6.4 Maintenance contribution for offsets

the Owner must pay the Offset Maintenance Contribution to Council upon the vesting of the Reserve in Council.

AL961631J

**6.5 Building envelopes**

the Owner must not build, construct or erect or cause or permit to be built, constructed or erected any Building outside a Building and Waste Disposal Envelope.

6.6 Waste disposal envelopes

unless with Council's prior written consent, the Owner must not dispose of, or cause or permit the disposal of, effluent on the Subject Land other than within a Building and Waste Disposal Envelope.

6.7 Septic tanks

the Owner must ensure that any septic tank system on the Subject Land includes:

- 6.7.1 secondary treatment of wastewater; and
- 6.7.2 disposal of treated wastewater by subsurface irrigation.

7. Owner's further obligations**7.1 Notice and registration**

The Owner must bring this Agreement to the attention of all prospective occupiers, purchasers, lessees, licensees, mortgagees, chargees, transferees and assigns.

7.2 Further actions

The Owner:

- 7.2.1 must do all things necessary to give effect to this Agreement;
- 7.2.2 consents to Council applying to the Registrar of Titles to record this Agreement on the certificate of title of the Subject Land in accordance with s 181 of the Act; and
- 7.2.3 agree to do all things necessary to enable Council to do so, including:
 - (a) sign any further agreement, acknowledgment or document; and
 - (b) obtain all necessary consents to enable the recording to be made.

7.3 Council's costs to be paid

The Owner must pay to Council within 14 days after a written request for payment, Council's costs and expenses (including legal expenses) relating to this Agreement, including:

- 7.3.1 preparing, drafting, finalising, signing, recording and enforcing this Agreement;
- 7.3.2 preparing, drafting, finalising and recording any amendment to this Agreement;
- 7.3.3 determining whether any of the Owner's obligations have been undertaken to Council's satisfaction; and
- 7.3.4 preparing, drafting, finalising and recording any document to give effect to the ending of this Agreement.

AL961631J**7.4 Time for determining satisfaction**

If Council makes a request for payment of any costs or expenses under clause 7.3.3, the Parties agree that Council will not decide whether the Owner's obligation has been undertaken to Council's satisfaction, or whether to grant the consent sought, until payment has been made to Council in accordance with the request.

7.5 Interest for overdue money

7.5.1 The Owner must pay to Council interest in accordance with s 227A of the *Local Government Act 1989* on any amount due under this Agreement that is not paid by the due date.

7.5.2 If interest is owing, Council will apply any payment made to interest and any balance of the payment to the principal amount.

7.6 Notification of compliance with Owner's obligations

The Owner must notify Council of its compliance with all of the Owner's obligations.

8. Agreement under s 173 of the Act

Without limiting or restricting the respective powers to enter into this Agreement, and insofar as it can be so treated, this Agreement is made as a deed in accordance with s 173 of the Act.

9. Owner's warranties

The Owner warrants that apart from the Owner and any other person who has consented in writing to this Agreement, no other person has any interest, either legal or equitable, in the Subject Land which may be affected by this Agreement.

10. Successors in title

Until such time as a memorandum of this Agreement is recorded on the certificate of title of the Subject Land, the Owner must require successors in title to:

- 10.1 give effect to this Agreement; and
- 10.2 enter into a deed agreeing to be bound by the terms of this Agreement.

11. General matters**11.1 Notices**

A notice or other communication required or permitted to be served by a Party on another Party must be in writing and may be served:

- 11.1.1 personally on the other Party;
- 11.1.2 by leaving it at the other Party's Current Address;

AL961631J

11.1.3 by posting it by prepaid post addressed to the other Party at the other Party's Current Address; or

11.1.4 by email to the other Party's Current Email.

11.2 No waiver

Any time or other indulgence granted by Council to the Owner or any variation of this Agreement or any judgment or order obtained by Council against the Owner does not amount to a waiver of any of Council's rights or remedies under this Agreement.

11.3 Severability

If a court, arbitrator, tribunal or other competent authority determines that any part of this Agreement is unenforceable, illegal or void then that part is severed with the other provisions of this Agreement remaining operative.

11.4 No fettering of Council's powers

This Agreement does not fetter or restrict Council's power or discretion to make decisions or impose requirements or conditions in connection with the grant of planning approvals or certification of plans subdividing the Subject Land or relating to use or development of the Subject Land.

11.5 Inspection of documents

A copy of any planning permit, document or plan referred to in this Agreement is available for inspection at Council offices during normal business hours upon giving the Council reasonable notice.

11.6 Governing law

This Agreement is governed by and is to be construed in accordance with the laws of Victoria.

12. Commencement of Agreement

This Agreement commences on the date specified on page one or if no date is specified on page one, the date Council executes this Agreement.

AL961631J


17/06/2015 \$121.50 173



Signing Page


Signed, sealed and delivered as a deed by the Parties.


Signed sealed and delivered by the Chief Executive Officer on behalf of the **East Gippsland Shire Council** pursuant to the power delegated to that person by an Instrument of Delegation in the presence of:

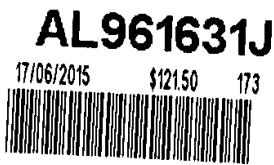

 Witness

Colleen Smith
 Print name 15-06-15

Executed by Nicholson River Pty Ltd ACN 140 839 710 in accordance with s 127(1) of the Corporations Act 2001:


 Signature of Director
Simon James Anderson
 Print full name

)
)
)
)

 Signature of Director (or Company Secretary)
ROSS CHARLES HERTZ
 Print full name



Mortgagee's Consent

National Australia Bank Ltd as Mortgagee under instrument of mortgage no. AL493274P consents to the Owner entering into this Agreement and in the event that the Mortgagee becomes mortgagee-in-possession, agrees to be bound by the covenants and conditions of this Agreement.

.....

AL961631J

17/06/2015 \$121.50 173



Registrar of Titles
Land Titles Office
Marland House
570 Bourke Street
MELBOURNE

**APPLICATION TO REGISTER AN AGREEMENT UNDER SECTION 173 OF THE
PLANNING AND ENVIRONMENT ACT 1987**

Certificate of Title Volume 11521 Folio 242

Registered Proprietor: Nicholson River Pty Ltd ACN 140 839 710

National Australia Bank Limited A.B.N. 12 004 044 937 as Mortgagee pursuant to Registered Mortgage number AL493274P hereby consents to the within Agreement.

Dated this 27th day of May 2015

EXECUTED by **NATIONAL AUSTRALIA BANK LIMITED** by being signed sealed and delivered in Victoria by its Attorney

MICHAEL JAMES COOK
who holds the position of Level 3 Attorney under
Power of Attorney dated 1/3/2007 (a certified
copy of which is filed in Permanent Order Book
No 277 Page No 025 Item 35) in the presence of:

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Attorney

Signature of Witness



Unearthed Heritage Australia Pty Ltd
 Address: PO Box 446 Castlemaine, Vic, 3450
 0427 757 300 | david@uneearthedheritage.com.au

John Holzer
 c/o
 Richard Hoxley
 Senior Planner
 Crowther & Sadler Pty Ltd

18 October 2021

Re: Aboriginal Cultural Heritage Requirements for the construction of a shed at 40 (Lot 15) Koraleigh View, Nicholson

The following letter was prepared by Unearthed Heritage Australia Pty Ltd to outline the requirements regarding the *Aboriginal Heritage Act 2006* (Vic) / *Aboriginal Heritage Regulations 2018* regarding the construction of a proposed shed at 40 (Lot 15) Koraleigh View. This letter addresses matters relating to the *Aboriginal Heritage Act 2006* and the *Aboriginal Heritage Regulations 2018*. In particular, whether proposed construction of the shed is a captured activity under a previously approved Cultural Heritage Management Plan (CHMP) that applies to the property (and broader subdivision).

1. The Study Area

The study area comprises the property at 40 (Lot 15) Koraleigh View, Nicholson. The study area is located within the East Gippsland Shire, and therefore subject to the East Gippsland Planning Scheme. We understand that the proposed development is the construction of a shed at the rear of the property.

2. Legislative Context

In Victoria, the *Aboriginal Heritage Act 2006* (the Act) is the main piece of legislation regarding the protection and management of Aboriginal cultural heritage. Section 47 of the Act states:

Section 47 - Regulations may require plan

The regulations may specify the circumstance in which a cultural heritage management plan is required for an activity or class of activity.

Under the *Aboriginal Heritage Regulations 2018* (the Regulations), Regulation 7 states:

Regulation 7 - When a cultural heritage management plan is required

A cultural heritage management plan is required for an activity if—

- (a) all or part of the activity area for the activity is an area of cultural heritage sensitivity; and
- (b) all or part of the activity is a high impact activity.



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It is important to note that the Act includes other instances where a mandatory CHMP is required (for example if the Minister directs the preparation of a CHMP or if an Environmental Effects Statement (EES), must be prepared).

Previously, a mandatory CHMP (CHMP 11323, Mathews and Whincop 2011) was prepared for the broader subdivision and was approved by Gunaikurnai Land and Waters Aboriginal Corporation (GLaWAC), the Registered Aboriginal Party (RAP) for the area.

3. The Proposed Activity

The proposed activity currently under consideration is understood to be the construction of a shed at the rear of 40 (Lot 15) Koraleigh View, Nicholson. The construction of a shed is not a listed high impact activity in the *Aboriginal Heritage Regulations 2018*, so the proposed activity does not trigger the need for a CHMP in isolation.

3. Does the study area occur in an area of cultural heritage sensitivity?

Division 3 of the Regulations defines areas of cultural heritage sensitivity for the purpose of establishing whether a CHMP is required.

The study area includes areas of cultural heritage sensitivity, as defined in the *Aboriginal Heritage Regulations 2018* (Regulation 25), being land within 50 of a registered Aboriginal place (Nicholson-Sarsfield Road 7 - 8422-0602).

4. Is a new mandatory CHMP required?

The proposed activity includes an area of cultural heritage sensitivity as defined in the Regulations but does not meet the threshold of a high impact activity, so thus does not trigger the mandatory requirement of a CHMP.

5. Previously approved CHMP

The previously approved CHMP (11323) covered the broader subdivision (at the time called 130 Nicholson-Sarsfield Road, Nicholson) and includes the current study area, 40 (Lot 15) Koraleigh View, Nicholson within its mapped activity area. The activity description of CHMP 11323 broadly included construction activities relating to the proposed low density residential subdivision and related infrastructure, amenities, and services. This included, development of residential blocks, topsoil stripping, road construction and ancillary works. The activity description of CHMP 11323 captures the currently proposed activity (construction of a shed).

Aboriginal cultural heritage (in the form of stone artefact scatters) was identified as part of the CHMP 11323 assessment and a total of 16 Aboriginal places were registered. All of these places were stone artefact scatters (noting many are lower density and would now be registered as low density artefact distributions).

One Aboriginal place (Nicholson-Sarsfield Road 7 - 8422-0602) partially overlaps with 40 Koraleigh View, Nicholson.



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As a management condition of the CHMP (then referred to as recommendation) three management zones were established with respect to registered Aboriginal cultural heritage and the land within the CHMP 11323 activity area more broadly, with these zones establishing the permissible types of activities that could occur within each zone. The management zones are presented below in Table 1 (see CHMP 11323, 123-128):

Table 1: Permissible ground disturbing activities within each zone. (From CHMP 11323, 126)

Zone	Description	Description of permissible ground disturbing activities within zone
1	Building envelope / road envelope	Permissible activities consist of all activities permissible under the relevant planning scheme (i.e. house construction, garage construction, landscaping, road & drainage construction, services reticulation etc. are all permissible)
2	Services envelope	Permissible activities consist of all activities permissible under the relevant planning scheme with the exception of the construction of any residential buildings (i.e. a driveway, services trenches, landscaping etc. are all permissible, while the construction of a house is not).
3	Increased harm minimisation envelope	Permissible activities consist of mechanical excavation only for the construction of residential storm water drains (if required). Landscaping and other ground disturbing impacts of a non-mechanical nature are permissible. There is to be no construction of buildings, structures, or ground disturbing works for the purposes of services.

The land where the shed is proposed is within 'Zone 2' (See Figures 1 and 2). Consistent with the wording in CHMP 11323, if the relevant planning scheme allows for the construction of a shed, then it is permitted under the zone 2 description and can occur under the CHMP.

The CHMP does define a 'Zone 3 – increased harm minimisation envelope' just south of the proposed shed and construction activities relating to the shed (including ground preparation) are not permitted under CHMP 11323 within this Zone 3 area.

6. Recommendations

1. If the construction of a shed is permissible under the relevant planning scheme, then the CHMP allow these works to occur as part of the 'Zone 2' description presented in Section 9.3, CHMP 11323, 126).
2. Under CHMP 11323, impacts from the shed construction are not permitted to the area marked 'Zone 3' on Figure 1 as this is an area where Aboriginal cultural heritage was identified and which is subject to a management condition of harm minimisation.
3. During construction works relating to the shed, temporary above ground fencing (e.g. cyclone mesh and above ground concrete footings and signage stating 'no ground disturbance from construction is permitted' (or similar) should be placed to demarcate the northern boundary of the 'Zone 3' harm minimisation envelope to ensure that ground disturbance does not occur to 'Zone 3' from the construction.
4. Despite this, a voluntary Cultural Heritage Permit (CMP) may be prepared with GLaWAC as risk minimisation should the client choose.



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I would be more than happy to discuss any of this advice, so please feel free to contact me.

David Mathews
Director/Principal Heritage Advisor
Uearthed Heritage Australia
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References

Mathews, David and Matthew Whincop. 2011. 130 Nicholson-Sarsfield Road, Nicholson:
Cultural Heritage Management Plan (11323). Unpublished Report prepared for Nicholson
River Pty Ltd



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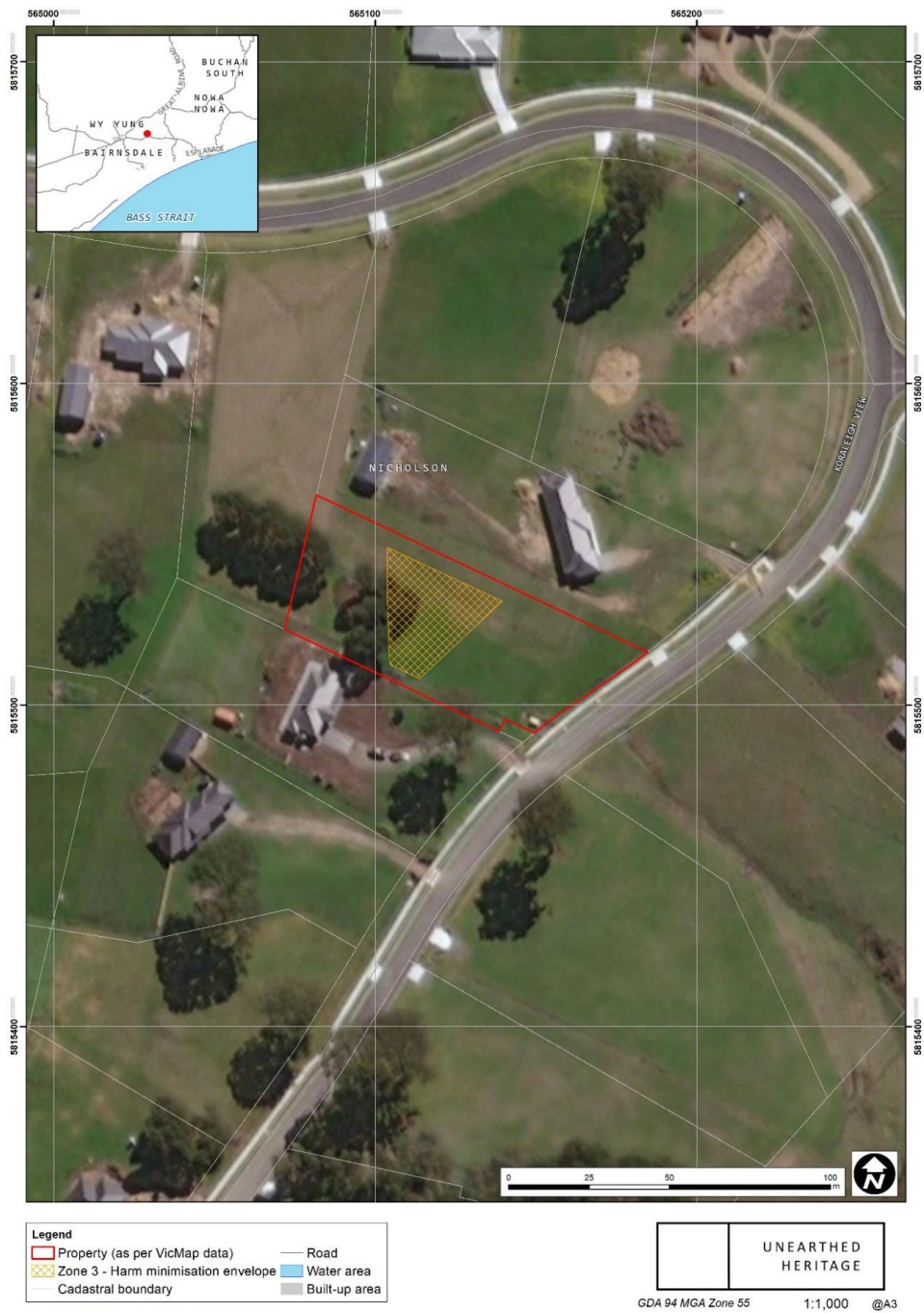


Figure 1: Location of Zone 3 (harm minimisation envelope) with the study area



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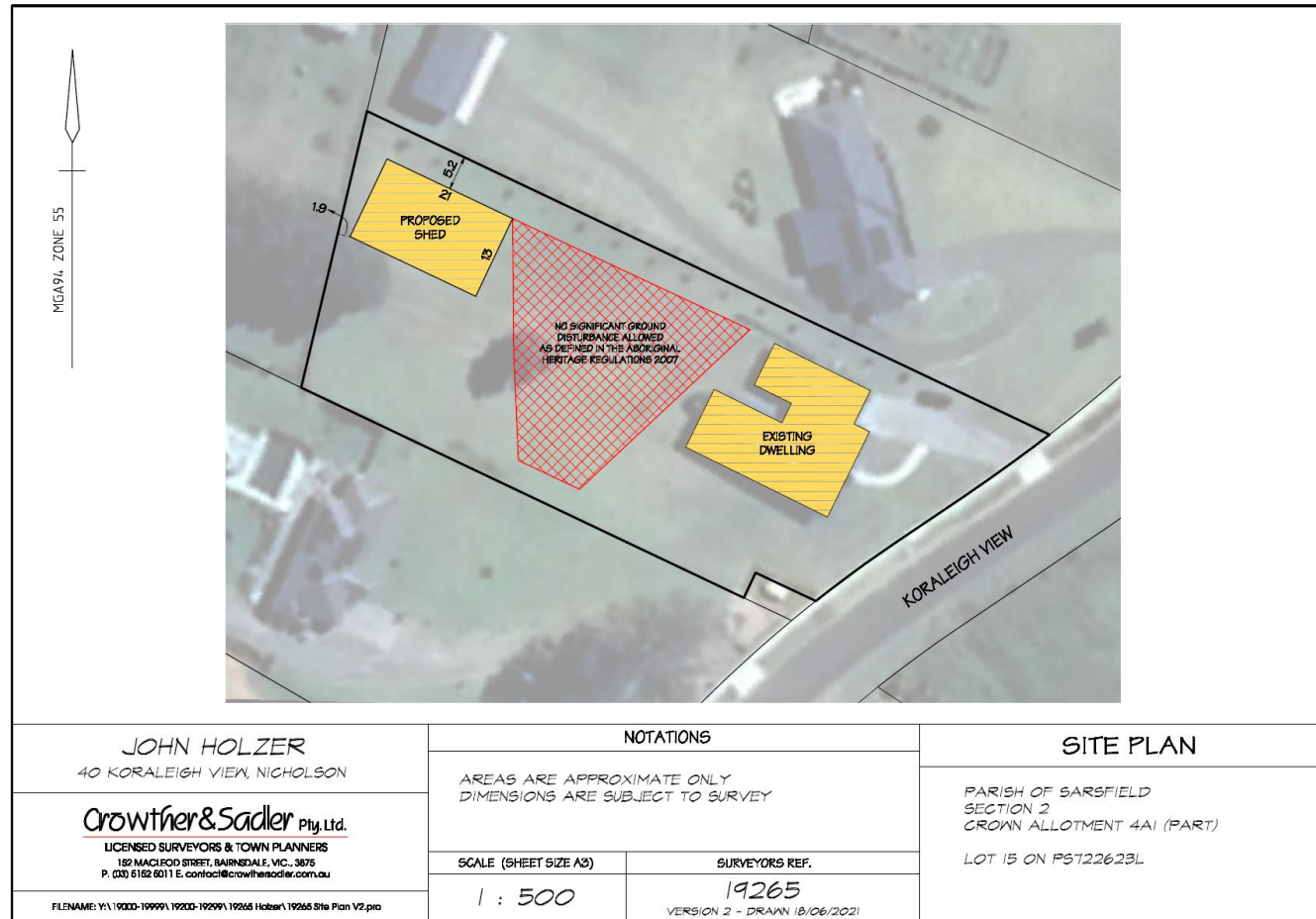


Figure 1: Location of proposed shed Location of Zone 3 (harm minimisation envelope) with the study area

5.3.5 Planning Permit Application - 475/2020/P 30 Clifton West Road, Wy Yung - Multi-lot subdivision, roadworks and removal of vegetation

Authorised by General Manager Place and Community

Conflict of Interest

Officers preparing this report have no conflict of interest to declare.

Executive Summary

This report seeks Council's resolution to adopt a formal position on the Planning Permit application for a multi-lot subdivision (208 lots), roadworks and the removal of vegetation at 30 Clifton West, Road Wy Yung. The application and related technical reports and other supporting documentation are included at **Attachment 2**.

Council is not being requested to determine the application as the Responsible Authority as the application is to be determined on appeal to the Victorian Civil and Administrative Tribunal (VCAT), following Council's failure to determine the application at its meeting of 5 October 2021 (Item 5.3.1). A position is sought to enable proper representation of Council at the VCAT proceedings.

The application received objections (**Attachment 3**) and was subject to a Planning Consultation Meeting on 21 June 2021. The Minutes of the Planning Consultation Meeting are included at **Attachment 4**.

The application was referred to various referral authorities and each provided consent or conditional consent to the application. Referral authority responses are included at **Attachment 5**.

The application, along with all supporting documentation was presented to the Council Meeting on 5 October 2021 with a recommendation to issue a Notice of Decision to Grant a Planning Permit with conditions outlined in **Attachment 1**.

A motion to adopt the recommendation was lost and no further motion was moved. The application is therefore deemed to be not determined.

The application proposes to create 208 lots for residential purposes with an average lot size of 5,871sqm, delivered across 10 stages. The Zone provides for residential development regardless of whether reticulated sewer is or is not provided. The proposed subdivision is considered by officers as being consistent with Local Planning Policy which encourages residential development and seeks to encourage subdivision within areas defined as being suitable for residential development.

Officer Recommendation

That Council:

- 1. receives and notes this report and all attachments pertaining to this report;***
- 2. resolves that, having considered all the relevant planning matters, and if it were the Responsible Authority, Council would take the view that planning application 475/2020/P is consistent with the requirements and objectives of the East Gippsland Planning Scheme and supports the granting of a Planning Permit for the multi lot subdivision of land, roadworks and the removal of vegetation, at 30 Clifton West Road Wy Yung subject to the permit conditions at Attachment 1; and***
- 3. authorises officers to take the position described in 2. above as Council's formal position to the Victorian Civil and Administrative Tribunal.***

Background

Application Status

Previous application - 345/2017/P

The application is a resubmission of a previous planning permit application 345/2017/P, which was refused by VCAT ([Flack v East Gippsland SC \[2020\] VCAT 939](#)). Member Blackburn ruled against the proposal, specifically in relation to drainage considerations and downstream impacts. In the ruling, the Member specifically concluded:

- 80. Clause 71.02-3 of the Scheme makes it clear that in determining planning permit applications, decision makers are to balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations. The exception to this, as I explained previously in these reasons, is the prioritisation of the protection of human life in bushfire affected areas.*
- 81. In this instance, I find the proposal to respond well to almost all of the relevant policies and planning controls of the Scheme, including those relating to bushfire. However, as I have explained above, there is one aspect of the proposal – its proposed stormwater management concept plan – which I have found have not been appropriately addressed in the potential impacts of stormwater on Clifton Creek or on Ms Crisp's property. As I have explained above, these are matters which I do not consider can be left for resolution by permit condition.*
- 82. While there are many considerations which weigh in favour of granting a permit, I do not consider these to outweigh the need for the potential impacts of the proposed management of stormwater on the natural environment and adjoining properties to be assessed and considered before a permit is issued. It is not acceptable for those impacts to be assessed after a permit is granted. They must be considered as part of any assessment of whether to grant a permit for the proposal, so that an integrated assessment of the merits of the proposal as a whole can be undertaken.*
- 83. It follows from this, that I have decided to refuse the application and have directed that no permit be granted*

Current application – 475/2020/P

The current application dated 4 March 2021 was lodged with a revised Stormwater Management Strategy prepared by Beveridge Williams dated 10 March 2021. The application and supporting documents are included at **Attachment 2**.

The concerns raised at the VCAT hearing are considered to be effectively managed and addressed by the current proposal, which is demonstrated in the submitted Stormwater Management Strategy. The strategy demonstrates how stormwater will be managed by controlling the rate of the stormwater runoff for post-development peak flows to pre-development levels, and by providing stormwater treatment to meet the best practice guidelines. For stormwater quality management it is proposed to provide three stormwater retarding basins located to the north, south-east and south of the development site. Further, a provision of four wetlands (each with a sedimentation basin) with three located within the retarding basins and one stand alone in the northeast. Previously, two stormwater retardation basins and three wetlands were proposed.

Additionally, through restrictions on title, there will also be 10,000 litre rainwater tanks installed for each lot which will provide additional detention above the permanent water level that can be controlled by an outlet halfway up the tank wall.

Due to the steep terrain of the area, the proposed basins would need to ensure that appropriate areas are set aside for the required volume, embankment, safety batters, maintenance access and wetlands to fit within their base. This will be addressed in final functional design plans.

The application has demonstrated to Councillor officers' satisfaction that the treatment of stormwater runoff would ensure that discharge would not significantly change to adjoining properties and that there are no detrimental downstream flow or quality impacts. As a result, it is considered that the stormwater management system will effectively meet the requirements of both the relevant drainage authority and responsible authority, and most importantly the concerns raised in the previous VCAT determination.

In assessing the application as a referral authority, the East Gippsland Catchment Management Authority has raised no objections to the proposal, and has recommended conditions, including (summarised):

1. A Waterway Management Plan must be endorsed in writing by the East Gippsland Catchment Management Authority. The Waterway Management Plan must provide for a significant improvement in the ecological health of all waterways on the subject land and must include:
 - a) Details of the existing environmental values;
 - b) Details of any initial stabilisation and vegetation works;
 - c) A landscape plan for revegetation of land within a 30 metre buffer of the waterway, drainage corridor and all water quality works;
 - d) A maintenance plan detailing the sequencing and periods of short, medium and long term actions and the parties responsible for each action.
2. An Agreement with the responsible authority pursuant to Section 173 of the Planning and Environment Act 1987 stipulating that:
 - a) A Waterway Management Plan to the satisfaction of the East Gippsland Catchment Management Authority applies to all lots in the plan of subdivision; and
 - b) The current and future owner(s) of all lots in the plan of subdivision must comply with all requirements of the Waterway Management Plan at all times.

All referral authority responses are included at **Attachment 5**.

Legislation

The implications of this report have been assessed and are not considered likely to breach or infringe upon the human rights detailed in the Victorian Government's Charter of *Human Rights and Responsibilities Act 2006*.

The application has been assessed against the East Gippsland Planning Scheme in accordance with the *Planning and Environment Act 1987*.

The applicable controls under the planning scheme are summarised below:

Application No.	475/2020/P
Address	30 Clifton West Road, Wy Yung
Zone	Low Density Residential Zone
Overlays	Erosion Management Overlay; Vegetation Protection Overlay (Schedule 1)
Particular Provisions	Clause 52.17, Native Vegetation Clause 53.01, Public Open Space Contribution Clause 65.02, Decision Guidelines - Subdivision

A full assessment against the East Gippsland Planning Scheme is included at **Attachment 6**.

In summary, the assessment is that:

- The proposal demonstrates a high level of consistency with the State and Local Planning Policy Framework. The purpose and objectives of the Low Density Residential Zone are addressed by the proposal which results in a good planning outcome for the subject land.
- The proposal will allow for a variety of infill development opportunities and activate infill development that is currently not being utilised.

It is understood that there are some concerns regarding the disposal of domestic wastewater on site. The Planning Scheme allows for lots of 4,000 square metres in the Low Density Residential Zone to be serviced with on-site wastewater systems.

Expert reports and evidence provided to the previous VCAT hearing addresses these issues in detail and concludes that on-site wastewater disposal is acceptable, in particular:

- Wastewater will be treated to a secondary level;
- Relatively low rainfall and high evaporation rates contribute to successful management of effluent disposal;
- Suitable soil permeability;
- Sandy/clay and organic/iron-rich clayey subsoils will retain nutrients and minimise risk of movement into waterways;
- Large block sizes accommodate appropriate wastewater disposal fields and separation for waterways and wetlands.

Aboriginal Cultural Heritage

Pursuant to the Aboriginal Heritage Regulations 2018, a Cultural Heritage Management Plan (CHMP) was required as the subject site is mapped as being of cultural heritage value. The applicant has provided a Cultural Heritage Management Plan with recommendation that an area in the south-east portion of the site is to be set aside in reserve in order to protect an artefact scatter found during the course of the site testing. The plan also recommends that this reserve is not to be accessible to the general public and that only Council officers can only enter to maintain the native vegetation. As a result, a 1.42-hectare reserve has been created to facilitate this.

Considerations of Gender Equality in Planning are made in relation to planning strategy, including planning scheme amendments and policy changes. Individual assessment of planning applications tend to be gender neutral, however Council officers consider factors such as community safety, privacy, and accessibility in an integrated and multi-faceted decision-making process.

Collaborative Procurement

Not applicable.

Council Plan

This report has been prepared and aligned with the following strategic objectives set out in the Council Plan 2021-2025:

Strategic Objective 2: 2.1 Statutory and strategic planning for land use delivers sustainable outcomes that balance the need for growth with the enhancement of our lifestyle, character, the built and natural environment.

Council Policy

In accordance with Council's Planning Permit Application Delegations Policy (April 2018), the application required consideration by Council as more than ten (10) objections were received during public notice, as set out in Section 8.5 of the Policy.

The application was referred to Council for a determination at the Council Meeting of 5 October 2021, but no determination was made.

Options

As the application is subject an appeal to VCAT, Council no longer has the authority to determine the application.

As Council is required to be represented at the Compulsory Conference (7 February 2022) and the later full Hearing (April 2022), it is considered important that Officers (or an independent consultant) are able to represent Council and put forward a position.

The options are:

Option 1: Council is not represented at the hearing.

Implications:

- There is no known precedent for the Responsible Authority to fail to attend a VCAT hearing.
- There is a risk of reputational damage.

Option 2: Attend the hearing but take no position on the application.

Implications:

- Similar to Option 1 above.
- Officers would have no clear direction as to how to act.
- The default position may be that officers would have to present their own professional views without reference to a formal Council position, which is not desirable.

Option 3: Adopt a position of support for the application as provided in the original recommendation to Council.

Implications:

- Objectors would not support the position however they will have their opportunity to present their objections and call expert witnesses as appropriate. They will obtain a fair hearing.

Option 4: Adopt a position of opposition to the application.

Implications:

- Reasons for opposition to the application will need to be provided on planning grounds. Given the previous VCAT decision and the applicant's further response on stormwater management, it is considered that there is little likelihood of success.
- Opposition on the grounds of inadequate wastewater disposal will require expert evidence and it is considered unlikely that such evidence is available.
- Council will require independent representation.

Option 5: Adopt a position of support for the application with amended or additional conditions.

Implications:

- Council would need to stipulate those conditions and they would need to be reasonable in achieving the policy objectives of the Planning Scheme.
- If Council wishes to impose a condition requiring the provision of reticulated sewerage, Council should be aware of the implications and unintended consequences of delivering reticulated sewerage to the site – potential for significant increases in lot density (at a reduced minimum lot size of 2,000 square metres, significant vegetation removal required to extend the existing sewer main a distance of approximately 2km north along Bullumwaal Road, cumulative impacts of opening up existing Low Density Residential zoned land for subdivision to 2,000 square metres.

Resourcing

Financial

The assessment has been undertaken utilising existing operational budget and is supported by statutory application fees for consideration.

Appearance at VCAT will require additional staff resources. Independent representation will have budgetary implications.

Plant and equipment

Not applicable.

Human Resources

The application has been assessed using existing human resources.

Risk

The risks of this proposal have been considered and are assessed as being low. The applicant has provided additional information and amendments to the proposal, particularly in relation to drainage, that are considered to address some, if not all objector concerns.

There are some reputational and financial risks associated with Council's position at the VCAT hearing as described in the options above.

Economic

The proposal will create an additional 208 lots adjacent to an existing low density residential area. The lots will be provided with services including water, electricity, and sewerage. The lots provide additional diversity in the housing market.

Subdivision and housing construction will generate economic activity and assist in addressing the current housing shortage, particularly for larger lifestyle lots which were a focus of submissions on the draft Rural Land Use Strategy.

Social

Pursuant to Clause 21.08 of the East Gippsland Planning Scheme, the proposal triggers an assessment under the Social Impact Assessment Guidelines for Development, as the proposed subdivision creates more than 60 lots.

The Applicant has provided a Social Impact Assessment where it has been evaluated and has appropriately considered the community's housing and community facility needs.

Gender Impact Statement

Not applicable.

Environmental

The proposed recommendation takes into consideration the environmental factors raised by objectors and responds to the views of relevant agencies and authorities including the East Gippsland Catchment Management Authority relating to stormwater management concerns, and the result will allow for increased environmental protection and improvement.

Climate change

This report has been prepared and aligned with the following Climate Change function/category:

Land Use Planning: Consideration is given to climate change in the local land use planning and includes responses to direct and indirect impacts.

Engagement

Engagement has been undertaken in the following manner:

Statutory Referrals

Country Fire Authority – Conditional consent
Department of Environment, Land, Water and Planning – Conditional consent
APA Group (Gas Distribution) – Conditional consent
AusNet – Consent with no conditions
Department of Transport – Conditional consent
Jemena (Gas Transmission) – Conditional consent
Public Transport Victoria – no response
East Gippsland Water – Conditional consent
East Gippsland Catchment Management Authority – Sought further information; amended plans received then provided Conditional consent

Objections

Objections received are provided at **Attachment 3** and the Minutes of the Planning Consultation Meeting are at **Attachment 4**.

Issues raised in the objections highlighted concerns relating to the following:

- Increased traffic/safety/vehicle noise
- Lack of public transport in the area
- The sewer system won't be able to cope
- Increased soil erosion
- Poor water management effecting Clifton Creek and adjoining properties
- Stormwater impacts onto Clifton Creek
- Bushfire concerns
- Loss of views
- Increase in Council rates
- Boundary setbacks insufficient
- Intersection to be updated between Salvatore Drive and new thoroughfare into the new subdivision
- Excessive street lighting
- Council reserve to be built
- Size of proposed blocks not providing variety
- Inappropriate and unsustainable development
- Loss of vegetation is a negative outcome in terms of the impact on the biodiversity of the area

Commentary on grounds for objection:

Many of the grounds for objection are valid and reasonable. The character of an area is often difficult to define, however in Wy Yung the character of the existing lot layout is quite apparent (i.e. larger lots above 4,000sqm in size). Below is a response to common concerns:

Loss of views/ Visual impact on landscape

The visual outlook will change, given the low-density nature of the proposed development compared to the existing agricultural conditions. There will still be ample green and open space that will define the landscape.

When a landowner seeks to develop their land in accordance with the planning scheme, inevitably there will be some degree of change experienced by those who own adjoining land. The key test is whether or not the change is positive or negative. On balance of all relevant factors, the net effect of this proposal is positive, and as such the impact on existing views is not enough to warrant a refusal of the proposal.

Noise pollution

Noise emanating from dwellings in a new residential estate is an expected outcome which the planning system does not take into account. Some residents will naturally be quieter or louder than others, however as a matter of personal behaviour it is not a planning-based ground for refusal.

Increase in rates

The claim has been made that the rates of adjoining land will increase should the subdivision proceed. This may occur if property values increase, however that is not a relevant planning consideration.

The number of lots is too high

One of the grounds of objection is that the number of lots is too high, in other words, the density is too high. The underlying zone allows for lots to be created that are a minimum of 4,000 square meters in size based on the lack of reticulated sewerage. The subdivision has met this requirement, and in fact most lots are significantly higher than the minimum lot size. As such, the subdivision does not represent high density development. In addition, this is an increase in average lot size compared to the previous application (application 345/2017/P, which was refused by VCAT).

The Bullumwaal Road/Clifton West Road intersection will become unsafe/road safety generally

VicRoads has requested permit conditions that would bind the applicant to upgrading the Clifton West/Bullumwaal Road intersection. These conditions will require the proponent to upgrade the intersection. In light of this, concerns relating to that intersection can be addressed.

It is considered that no direct access to and from new lots created be allowed onto Clifton West Road, this can be achieved via a permit condition requiring a legal agreement to be entered into requiring access to these lots to be undertaken from the internal road within the subdivision.

Impact on flora and fauna

The vast majority of the land is already cleared of vegetation. The vegetation to be removed involves two dead silver Banksia's and one 'red box' tree.

In terms of impact on fauna, the planning application included a biodiversity report which detailed that there was very little evidence of native fauna existing on the subject site.

Pedestrian safety

The proposed subdivision includes provision of a shared walking/cycle path throughout the estate. There is also provision for passive open space in the northern reserves and Municipal Reserve, linking to existing pedestrian trails. General pedestrian safety is not expected to be adversely impacted.

Lack of public transport

The application was referred to the Head, Transport for Victoria but unfortunately no response was received. It is anticipated that bus services would extend to the estate.

Stormwater impacts

The hydrology and drainage strategy submitted with the application details the manner in which the storm water drainage will be treated, retained and released from the site. The provision of two retention basins along with the required physical infrastructure usually installed as a part of a residential subdivision, gives rise to confidence that the development will not lead to an unacceptable storm water drainage outcome.

As this was the key ground of refusal by the Tribunal, considerable additional detail has been provided to satisfy the concerns of the Tribunal and objectors in relation to the grant of a permit. It is considered that the additional information surrounding the stormwater regime, specifically the outflow over the Crisp property, combined with the deletion of some lots and improved clarity regarding waterway quality, will provide for suitable development outcomes and will not compromise waterway health and safety.

Lack of open space

The plan of subdivision includes a suitable amount of open space. In addition to this it is important to note that the average lot size will be at least 5,871sqm in size. As such, it is expected that most lots will leave 80-90% of their footprint undeveloped, providing for private open space. There will be ample 'passive' open space for the future residents to enjoy. The social impact assessment clarifies that the proposal will not put an undue strain on existing regional public open space and amenities.

Boundary setbacks insufficient

The application documentation included a building envelope plan which showed where each lot might contain a dwelling or a shed. Boundary setbacks included in this subdivision are typical of a low-density estate, and based on a planning assessment, they are suitable for support.

Not appropriate for a rural area

The land has been zoned low density residential since the new format planning scheme was adopted in 1999, and similar zoning was provided for in the former Shire of Bairnsdale Planning Scheme. The proposed subdivision, having met the technical requirements established by the LDRZ can be considered on merit.

Although people may feel that the subdivision is not appropriate, the proposal before Council seeks to subdivide land in accordance with the underlying zone. The underlying zone indicates that the outcome is acceptable.

Attachments

1. Proposed Permit Conditions [5.3.5.1 - 12 pages]
2. Application Documents [5.3.5.2 - 1 page]
3. Objections [5.3.5.3 - 1 page]
4. Minutes PCM 21 June 2021 [5.3.5.4 - 5 pages]
5. Referral Responses [5.3.5.5 - 20 pages]
6. Detailed Scheme Assessment [5.3.5.6 - 10 pages]

475/2020/P - 30 Clifton West Road WY YUNG
 Lot 1 & 2 TP 663976, Lot 2 LP 146101 - Multi-lot subdivision,
 roadworks and removal of vegetation

CONDITIONS

1. The subdivision, works and vegetation removal as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.
2. The subdivision must proceed in the order of stages as shown on the endorsed plans unless otherwise agreed in writing by the Responsible Authority.
3. Before a statement of compliance is issued, the owner must enter into an agreement with the Responsible Authority under section 173 of the *Planning and Environment Act 1987* to provide for the following:
 - a) Any dwelling on each lot must include a rainwater tank having a minimum storage capacity of 5,000 litres; and
 - b) The rainwater tank must collect rainwater runoff from the roof of the dwelling; and
 - c) The rainwater tank must be used as the primary water source for flushing of toilets, laundry services and also include an external tap for garden irrigation.

The owner must pay the costs of the preparing, lodging and registering the agreement and any subsequent amendment, removal or other dealing associated with the agreement. The agreement must be registered on the certificate of title for the land.

4. Before the issue of statement of compliance for Stage 1, a Waterway Management Plan (WMP) for the waterways on the site must be submitted to and be approved by the Responsible Authority. The WMP must include:
 - A landscape plan for revegetation of the waterway, drainage corridor and all water quality works, including a species list and proposed density of the plantings. The vegetation must be representative of the Ecological Vegetation Class for the site;
 - An ongoing maintenance plan detailing the sequencing and periods of short, medium and long-term actions, including inspections, and the parties responsible for each action; and
 - Be prepared in accordance with the East Gippsland Urban Waterway Guidelines 2013.

Before the issue of statement of compliance for each stage, the identified works and plantings in their respective stage, must be completed to the satisfaction of the Responsible Authority.

5. Before works commence, a public open space landscape plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale. The plans must show:

- A schedule of all proposed vegetation (trees, shrubs and ground covers) which includes botanical names, common names, mature size and total quantities of each plant.
- Pot sizes and specific location of the plants to be planted.
- A concrete footpath at least 2m wide through the pedestrian connections.
- Public park infrastructure such as BBQ's, shelters, drinking fountains, seats, children's playgrounds and picnic tables.
- Fencing at the interface of proposed lots and the municipal reserve, waterway reserves and the pedestrian connections (such fencing must be of at least 50% and no taller than 1.5 metres).
- Natural features that influence the landscape design.
- Proposed irrigation methods.
- The proposed design features such as paths, paving, lawn, finished surfaces and outdoor lighting (including in the reserves).

Landscaping in accordance with this plan and schedule, in each stage, must be completed before the before the issue of statement of compliance for each stage.

6. Before works commence, a streetscape landscape plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale. The plans must show:

- A schedule of all proposed vegetation (trees, shrubs and ground covers) which includes botanical names, common names, mature size and total quantities of each plant.
- Pot sizes and specific location of the plants to be planted.
- A minimum of 180 canopy trees with a minimum height on reaching maturity of 8 metres.
- The proposed design features such as footpaths, paving, lawn, finished surfaces and outdoor lighting

Landscaping in accordance with this approved plan and schedule, in each stage must be completed before the issue of statement of compliance for each stage.

7. Before any works associated with the subdivision start, a detailed drainage management plan to the satisfaction of the Responsible Authority must be submitted to and be approved by the Responsible Authority. When approved, the plans will then form part of the permit. The design and documentation for the drainage works must be prepared in accordance with standard engineering practice to provide for the collection, control and disposal of all stormwater runoff, and show:

- a) Drainage infrastructure including swale drains and culverts, piping/drains and pits.
- b) Any modification to the terrain, such as filling and excavation.
- c) Easements and legal points of discharge.
- d) Methods of on-site detention, including the provision of sediment traps, wetlands, detention basins, rock beached outlets, drop structures, and other dispersive structures.
- e) The drainage plans must be prepared in accordance with Water Sensitive Urban Design (WSUD) principles for 1% AEP and 20% AEP storm events and the recommendations of the Beveridge Williams Storm Water Management Strategy; dated 09/11/2020.

All drainage works and requirements must be undertaken and completed to the satisfaction of the Responsible Authority.

8. Before any road works associated with the subdivision start, detailed construction plans to the satisfaction of the Responsible Authority must be submitted to and be approved by the Responsible Authority. When approved, the plans will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must show:
 - a) Fully sealed pavement for all new roads, with a minimum width of 6.2 metres, with formed shoulders no less than 1.5 metres wide and swale drains on each side.
 - b) A concrete footpath on one side of all new roads at least 2 metres wide, throughout the entirety of subject site.
 - c) An intersection design for the Clifton West Road point of access including measures to avoid directing traffic down Lanteris Road.
 - d) An intersection design for Clifton West Road/Bullumwaal Road in accordance with VicRoads permit conditions.
 - e) Fully sealed pavement with a suitably gypsum stabilised subgrade, with a turning area with a minimum trafficable radius of ten metres at the end of each court bowl
 - f) The internal access road and road reserve's longitudinal gradients, must not exceed 10% without the approval of the Responsible Authority.
 - g) Verge areas with a width sufficient for the construction of drainage infrastructure and for pedestrian access.
 - h) Street lighting using LED technology.
 - i) Statutory signage and traffic control devices and line marking.

The documentation for the road works must include provision for maintenance and repair of damage to any existing road and drainage infrastructure for a twelve-month defects liability period.

Before the issue of statement of compliance for each stage, all works and requirements in each stage must be undertaken and completed to the satisfaction of the Responsible Authority.

9. Before the Issue of Statement of Compliance any portion of Council's existing infrastructure damaged as a result of work undertaken on the site or associated with the development must be repaired/reinstated to the satisfaction of the responsible authority.
10. All roads, storage areas, stockpiles and vacant or grazed areas must be covered and maintained to avoid dust emissions and nuisance to the surrounding area to the satisfaction of the Responsible Authority.
11. Before the issue of a Statement of Compliance, the applicant or owner must pay to the Council an amount equal to five percent of the site value of all the land in the subdivision, pursuant to Section 18 of the Subdivision Act 1988. This amount may be adjusted in accordance with Section 18 of the Subdivision Act 1988.
12. All earthworks associated with the development must be stabilised in accordance with standard engineering design and practices against erosion and failure. All earthworks or retaining structures must not encroach across neighbouring property boundaries to the satisfaction of the Responsible Authority.

All earthworks works in this development are to be undertaken in accordance with, but not limited to; the recommendations of the Strata Geoscience and Environmental “Erosion, Slope Stability and General Geotechnical Risk Assessment and Management Strategies” Report 02449V6, dated 10/11/2020 and also their “Soil and Water Management Plan” Report 03881.

13. During construction and maintenance activities, adequate steps must be taken to stop soil erosion and the movement of sediment off site and into drainage lines, watercourses and onto adjoining land to the satisfaction of the Responsible Authority. Methods include but are not limited to:
 - a) Control of on-site drainage by intercepting and redirecting run-off in a controlled manner to stabilised vegetated areas on site.
 - b) Installation of sediment control structures such as sediment basins, sediment fences and sediment traps when construction commences and maintaining them until the site is stabilised.
 - c) Re-vegetating all disturbed areas as quickly as possible or within 14 days after construction works are completed.
14. Cut batters must be no steeper than 1 in 1.5 and fill batters no steeper than 1 in 2 unless retained by structural means. When completed, all batters must have a layer of topsoil, 50mm minimum thickness, spread over them and sown with a suitable grass and clover mixture, or mulched and planted with ground cover plants to the satisfaction of the Responsible Authority.
15. Before the commencement of any works associated with the subdivision start, a construction management plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must include:
 - Location of any temporary construction works office and machinery storage area;
 - The construction works access way;
 - Details of construction days and hours;
 - Vehicle and machinery exclusion zones;
 - Location and management requirements of stockpiled soil;
 - Measures and techniques to protect drainage lines and watercourses from sediment runoff from disturbed or under construction areas;
 - Measures and methods to be employed to protect sites of conservation importance, native vegetation and areas of archaeological significance;
 - Measures and techniques to manage dust control;
 - A note that Dewatering of sedimentation/retention basins during construction is *prohibited* without the prior approval of the Responsible Authority;
 - The location of a machinery and vehicle wash down area and requirements for the ongoing use of the of the machinery and vehicle wash down area by contractors;
 - Location and management of litter storage areas, construction waste areas and chemical storage areas; and
 - Methods of ensuring all contractors are informed of the requirements of the construction management plan and persons responsible for ensuring the construction management plan is adhered to.

All construction works and requirements of the construction management plan must be undertaken and completed in accordance with the endorsed construction management plan to the satisfaction of the Responsible Authority.

16. No roadside vegetation is to be removed, lopped or cleared without written Council approval or until a separate planning permit has been issued by the Responsible Authority.
17. No vegetation is to be removed, lopped or cleared without the written approval of Council or until a separate planning permit has been issued by the Responsible Authority.
18. All works and activities must be undertaken in accordance with the approved Cultural Heritage Management Plan.

Country Fire Authority conditions
Subdivision plan not to be altered

19. The subdivision as shown on the endorsed plans must not be altered without the consent of CFA.

Hydrants

20. Prior to the issue of a Statement of Compliance under the *Subdivision Act 1988* the following requirements must be met to the satisfaction of the CFA:
 - a) Above or below ground operable hydrants must be provided. The maximum distance between these hydrants and the rear of all building envelopes (or in the absence of building envelopes, the rear of the lots) must be 90 metres and the hydrants must be no more than 120 metres apart. These distances must be measured around lot boundaries.
 - b) The hydrants must be identified with marker posts and road reflectors as applicable to the satisfaction of the Country Fire Authority.

Roads

21. Roads must be constructed to a standard so that they are accessible in all weather conditions and capable of accommodating a vehicle of 15 tonnes for the trafficable road width.
 - a) The average grade must be no more than 1 in 7 (14.4%) (8.1 degrees) with a maximum of no more than 1 in 5 (20%) (11.3 degrees) for no more than 50 meters. Dips must have no more than a 1 in 8 (12%) (7.1 degree) entry and exit angle.
 - b) Curves must have a minimum inner radius of 10 metres.
 - c) Have a minimum trafficable width of 3.5 metres and be clear of encroachments for at least 0.5 metres on each side and 4 metres above the access way.
 - d) Roads more than 60m in length from the nearest intersection must have a turning circle with a minimum radius of 8m (including roll-over kerbs if they are provided) T or Y heads of dimensions specified by the CFA may be used as alternatives.

Department of Environment, Land, Water & Planning Conditions

22. Before works start, the permit holder must advise all persons undertaking the vegetation removal or works on site of all relevant permit conditions and associated statutory requirements or approvals.

23. The Department of Environment Land Water and Planning native vegetation report (ID: 319-20201106-002, dated 6/11/2020) included with the application will be endorsed and form part of this permit.
24. Before works start, plans to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the responsible authority will endorse the plans, which will then form part of this permit. The plans must include:
 - a. a detailed description of the measures to be implemented to protect the native vegetation to be retained during construction works, and the person/s responsible for implementation and compliance. These measures must include the erection of a native vegetation protection fence around all native vegetation to be retained on site, to the satisfaction of the responsible authority, including the tree protection zones of all native trees to be retained. All tree protection zones must comply with AS 4970-2009 Protection of Trees on Development Sites.
 - b. an amended site plan, drawn to scale with dimensions and georeferences (such as VicGrid94 co-ordinates), that clearly shows:
 - i. the location and identification of the land affected by this permit, including standard parcel identifiers for freehold land
 - ii. the location and area of all native vegetation present, including scattered trees, that are permitted to be removed under this permit
 - iii. all areas of native vegetation to be retained, including roadside native vegetation with tree protection zones extending onto the subject land.
25. Except with the written consent of the responsible authority, within the area of native vegetation to be retained and any tree or vegetation protection zone associated with the permitted use and/or development, the following is prohibited:
 - a. Vehicular or pedestrian access
 - b. Trenching or soil excavation
 - c. Storage or dumping of any soils, materials, equipment, vehicles, machinery or waste products
 - d. Entry and exit pits for the provision of underground services
 - e. Any other actions or activities that may result in adverse impacts to retained native vegetation

Native vegetation permitted to be removed, destroyed or lopped

26. The native vegetation permitted to be removed, destroyed or lopped under this permit is 0.031 hectares of native vegetation, which is comprised of:
 - a. 1 scattered small tree.

Native vegetation offsets

27. To offset the removal of 0.0031 hectares of native vegetation, the permit holder must secure the following native vegetation offset in accordance with *Guidelines for the removal, destruction or lopping of native vegetation* (DELWP 2017):
 - a. A general offset of 0.006 general habitat units:
 - i. Located within the East Gippsland Catchment Management boundary or East Gippsland municipal area
 - ii. With a minimum strategic biodiversity value of at least 0.320

28. Before the issue of a Statement of Compliance, evidence that the required offset for stage 7 of the subdivision has been secured must be provided to the satisfaction of the responsible authority. This evidence must be one or both of the following:
- An established first party offset site including a security agreement signed by both parties, and a management plan detailing the 10-year management actions and ongoing management of the site, and/or
 - Credit extracts (s) allocated to the permit from the Native Vegetation Credit Register.

Offset evidence

29. A copy of the offset evidence will be endorsed by the responsible authority and form part of this permit. Within 30 days of endorsement of the offset evidence, a copy of the endorsed offset evidence must be provided to Planning & Approvals at the Department of Environment, Land, Water and Planning Traralgon regional office via gippsland.planning@delwp.vic.gov.au.

First party offset reporting

30. Where the offset includes a first party offset, the permit holder must provide an annual offset site report to the responsible authority by the anniversary date of the execution of the offset security agreement, for a period of 10 consecutive years. After the tenth year, the landowner must provide a report at the reasonable request of a statutory authority.

Jemena Asset Management Pty Ltd conditions

- 31.
- Jemena requires a construction safety management study (SMS) to determine threats and controls. This will be required once civil contractors have been awarded the works
 - Jemena accepts the two road crossings, but will be subject to a review of detail designs by Jemena, these road crossings may require concrete protection slabbing and further integrity testing of the pipeline at the proponents expense
 - The location of effluent systems adjacent to the pipeline easement will be subject to a review of detail designs by Jemena, as excavation adjacent to the pipeline may have a detrimental effect, and discharge of the effluent systems over the easement is not allowed
 - The creation of wetlands and retarding basin on or near the easement may require clarification.
 - Access along easement (gates at fence lines) through the created allotments may require LCA consideration, additionally the style of fencing crossing the easement will need to be considered by Jemena, ideally wire stock fencing or similar
 - Allotments, 212, 213, 214, 303, 304 and 305 will be subject to subject to Jemena approval of any services crossings, or driveway crossings of Jemena's easement. Additionally, Jemena will not approve any encroachment of Building envelopes over the easement, this includes and not limited to eave and pergola overhangs
 - Allotments, 212, 213, 214, 303, 304, 305 and 1003, cannot install any structures, this includes and not limited to, sheds, garages, chicken coops, swimming pools and spas over the gas pipeline easement
 - Jemena also reserves the right to limit the vegetation planting within the easement, the planting of large trees, bushes and orchards will not be allowed

- During the construction of the subdivision the easement boundaries are to be clearly marked by flagging and or temporary fencing to ensure the safety of the gas pipeline from heavy machinery
- All subdivision works around the gas pipeline easement should refer to Jemena's GUIDELINE TO DESIGNING, CONSTRUCTING AND OPERATING AROUND EXISTING AS2885 NATURAL GAS PIPELINES GAS-960-GL-PL-001 (attached)

Department of Transport conditions

32. At the intersection of Clifton West Road and Bullumwaal Road, a right turn lane short CHR(s) and an Auxiliary left turn lane generally in accordance with the Austroads guidelines must be constructed.
33. At the intersection, a splitter island must be provided.
34. The intersection is to be provided with V3 roadway lighting to the satisfaction of the Department.
35. Prior to the statement of compliance of stage 1, a detailed functional layout in accordance with Eastern Regions Developer funded checklist must be submitted and approved by the Head, Transport for Victoria.
36. Prior to the certification of stage 2, detail design plans in accordance with Eastern Regions Developer funded checklist must be submitted and approved by the Head, Transport for Victoria.
37. Prior to the issue of a statement of compliance for stage 2, the intersection works at Clifton West Road and Bullumwaal Road must be completed at no cost and to the satisfaction of the Department.
38. Prior to works beginning in the road reserve, detail plans in accordance with Eastern Regions Developer funded checklist must be submitted and approved by the by the Head, Transport for Victoria.
39. Prior to intersection roadwork design plans being prepared, a pre-design meeting with the Department of Transport must be attended.
40. The subdivision must proceed in the order of stages as shown on the endorsed plan unless otherwise agreed in writing by the Responsible Authority and the Head, Transport for Victoria.
41. Prior to commencement of the development hereby approved a truck wheel-wash must be installed at the property boundary to enable all mud and other tyre borne debris from vehicles to be removed prior to exiting the land.
42. The truck wheel-wash must be maintained in good order during the construction phase of the development and may be removed at the end of the construction phase of the development with the prior approval of VicRoads.

Ausnet Electricity Services conditions

43. The Plan of Subdivision submitted for certification must be referred to Ausnet Electricity Services Pty Ltd in accordance with Section 8 of the Subdivision Act 1988.

43. The applicant must enter in an agreement with Ausnet Electricity Services Pty Ltd for supply of electricity to each lot on the endorsed plan.
44. The applicant must enter into an agreement with Ausnet Electricity Services Pty Ltd for the rearrangement of the existing electricity supply system.
45. The applicant must enter into an agreement with Ausnet Electricity Services Pty Ltd rearrangement of the points of supply to any existing installations affected by any private electric power line which would cross a boundary created by the subdivision, or by such means as may be agreed by Ausnet Electricity Services Pty Ltd.
46. The applicant must provide easements satisfactory to Ausnet Electricity Services Pty Ltd for the purpose of "Power Line" in the favour of "Ausnet Electricity Services Pty Ltd" pursuant to Section 88 of the Electricity Industry Act 2000, where easements have not been otherwise provided, for all existing Ausnet Electricity Services Pty Ltd electric power lines and for any new power lines required to service the lots on the endorsed plan and/or abutting land.
47. The applicant must obtain for the use of Ausnet Electricity Services Pty Ltd any other easement required to service the lots.
48. The applicant must adjust the position of any existing Ausnet Electricity Services Pty Ltd LTD easement to accord with the position of the electricity line(s) as determined by survey.
49. The applicant must set aside on the plan of subdivision Reserves for the use of Ausnet Electricity Services Pty Ltd for electric substations.
50. The applicant must provide survey plans for any electric substations required by Ausnet Electricity Services Pty Ltd and for associated power lines and cables and executes leases for a period of 30 years, at a nominal rental with a right to extend the lease for a further 30 years. Ausnet Electricity Services Pty Ltd requires that such leases are to be noted on the title by way of a caveat or a notification under Section 88 (2) of the Transfer of Land Act prior to the registration of the plan of subdivision.
51. The applicant must provide to Ausnet Electricity Services Pty Ltd a copy of the plan of subdivision submitted for certification that shows any amendments that have been required.
52. The applicant must agree to provide alternative electricity supply to lot owners and/or each lot until such time as permanent supply is available to the development by Ausnet Electricity Services Pty Ltd. Individual generators must be provided at each supply point. The generator for temporary supply must be installed in such a manner as to comply with the Electricity Safety Act 1998.
53. The applicant must ensure that all necessary auditing is completed to the satisfaction of Ausnet Electricity Services Pty Ltd to allow the new network assets to be safely connected to the distribution network.

Catchment Management Authority conditions

54. Prior to the commencement of any works related to the subdivision, a Waterway Management Plan must be endorsed in writing by the East Gippsland Catchment Management Authority. The Waterway Management Plan must provide for a

significant improvement in the ecological health of all waterways on the subject land and must include:

- a. Details of the existing environmental values;
 - b. Details of any initial stabilisation and vegetation works;
 - c. A landscape plan for revegetation of land within a 30 metre buffer of the waterway, drainage corridor and all water quality works, including a species list and proposed density of the plantings. The vegetation must be representative of the Ecological Vegetation Class for the site. The revegetation of land within the 30m buffer of the waterways should comply with the following requirements:
 - i. Channel/Lower Bank Zone - Mass tubestock planting (6/m²) and 800 GSM jute mat where required for stabilisation.
 - ii. Primary Buffer Zone – A minimum 10m wide planted continuous buffer zone is to be established to both sides of the waterway channel, wetland area or other conservation zone. The buffer zone is to be planted at 4/m² to establish scattered trees, areas of shrubs and ground layer vegetation recreating the prevailing EVC. Existing trees and areas of existing natural vegetation are to be incorporated into the planted buffer zone where possible.
 - iii. Secondary Buffer Zone Areas - outside the primary buffer zone/waterway channel/wetlands, but within 30m of the waterway, are also to be revegetated to form a secondary buffer and should focus on providing good ground cover with a density of 2 plants/m² and with a scattered planting of overstorey trees.
 - d. A maintenance plan detailing the sequencing and periods of short, medium and long term actions and the parties responsible for each action.
55. Prior to the issue of a Statement of Compliance for the subdivision, the owner(s) shall enter into an Agreement with the responsible authority pursuant to Section 173 of the Planning and Environment Act 1987 ('the Act') and make application to the Registrar of Titles to have the Agreement registered on the title to the land under Section 181 of the Act. The owner(s) must pay all reasonable costs of the preparation, execution and registration of the Agreement. The Agreement will stipulate that:
- a. A Waterway Management Plan to the satisfaction of the East Gippsland Catchment Management Authority applies to all lots in the plan of subdivision
 - b. The current and future owner(s) of all lots in the plan of subdivision must comply with all requirements of the Waterway Management Plan at all times.

East Gippsland Water conditions

56. Water reticulation infrastructure must be extended to service each Lot to East Gippsland Water's requirements, at the cost of the Applicant/Developer. Subject to East Gippsland Water's requirements being met, relevant infrastructure will then become Gifted Assets (refer Notes). Each Lot is to be separately serviced by the water reticulation system and able to be separately metered.
57. Arrangements for the design, construction, commissioning and acceptance of all Gifted Assets required by East Gippsland Water to extend water services to each lot require written approval by East Gippsland Water. Design drawings to be sent to developerworks@egwater.vic.gov.au after Certification Application has been made.

58. If the existing dwelling is retained, the current water meter (#96837) is to be relocated to within the boundaries of the relevant lot. If existing dwelling is removed, the current water meter is to be disconnected and returned to East Gippsland Water.
59. Provide easements on the plan of subdivision over newly created or existing infrastructure, as required by East Gippsland Water.
60. Payment of applicable Development Planning Charges by the Applicant/Developer to East Gippsland Water (refer Notes)
61. Any additional infrastructure required to adequately service the development would need to be provided by the developer at the developer's cost. The type and extent of additional infrastructure, if needed, is subject to detailed engineering design and approval by East Gippsland Water.

Time Limit condition

62. This permit will expire if one of the following circumstances applies:
 - The works and vegetation removal is not completed within twelve (12) years of the issue date of this permit;
 - The plan of subdivision for Stage 1 is not certified within two (2) years of the issue date of this permit;
 - The plan of subdivision for all remaining Stages is not certified within seven (7) years of the issue date of this permit;
 - A Statement of Compliance is not issued for each stage within five (5) years of the date of the plan of subdivision being certified;

In accordance with section 69 of the Planning and Environment Act 1987, an application may be submitted to the Responsible Authority for an extension of the periods referred to in this condition.

Notes

1. Before undertaking works within a Council road reserve, a non-utility – minor works consent of works within road reserve must be obtained from the *Roads and Traffic* unit of Council. Refer to the Infrastructure Design Manual (IDM) for crossover designs.

East Gippsland Water notes

2.
 - (A) Subject to its written acceptance of the Gifted Assets, East Gippsland Water will become responsible for ownership and the ongoing maintenance and operation of the assets in perpetuity.
 - (B) Development Planning Charges apply where East Gippsland Water are involved in the developer's works (actual charge is based on the final cost of the works). Contact East Gippsland Water for further information on these fees.

Department of Transport note

3. Separate consent for works within the road reserve and the specifications of these works is required under the Road Management Act. For the purposes of this application the works will include provision of:
 - Right turn lane

- Left turn lane
- Roadway Lighting
- Splitter island

Country Fire Authority Note

4. Note –CFA's requirements for identification of hydrants are specified in 'Identification of Street Hydrants for Firefighting Purposes' available under publications on the CFA web site (www.cfa.vic.gov.au)

Planning Application documents

The planning permit application consists of several major reports, including traffic impact assessment, stormwater drainage design, cultural heritage assessment, erosion/geotechnical risk assessment and the supporting title and planning report.

The files are so large, they have been split into four parts on our Advertised Planning Applications section of the website.

If you wish to access the relevant documentation, please download from the following weblinks:

https://egswazstorage.blob.core.windows.net/pubwebcontent/advertised-planning-permit-applications/4752020P_30_Clifton_West_Road_Wy_Yung1.pdf

https://egswazstorage.blob.core.windows.net/pubwebcontent/advertised-planning-permit-applications/4752020P_30_Clifton_West_Road_Wy_Yung2.pdf

https://egswazstorage.blob.core.windows.net/pubwebcontent/advertised-planning-permit-applications/4752020P_30_Clifton_West_Road_Wy_Yung3.pdf

https://egswazstorage.blob.core.windows.net/pubwebcontent/advertised-planning-permit-applications/4752020P_30_Clifton_West_Road_Wy_Yung4.pdf

These files will not be removed until the matter is resolved.

Planning Permit Application - 475/2020/P 30 Clifton West Road, Wy Yung - Multi-lot subdivision, roadworks and removal of vegetation

[Objections](#)



**EAST GIPPSLAND SHIRE COUNCIL
PLANNING CONSULTATION MEETING
475/2020/P - 30 CLIFTON WEST ROAD
multi-lot subdivision, roadworks and
removal of vegetation**

**Record of Meeting
(Minutes)**

MONDAY, 21 JUNE 2021

VIA MICROSOFT TEAMS AND BROADCAST EASTGIPPYTV YOUTUBE

COMMENCING AT 6:03 P.M.

1. PROCEDURAL

1.1 APOLOGIES

Councillors: Kirsten Van Diggele, John White

Objectors: various

1.2 IN ATTENDANCE

Councillors: Mindy Urie, Mark Reeves, Trevor Stow, Arthur Allan, Crooke, Sonia Buckley

Applicant: Chris Curnow - Beveridge Williams
Barry Wood

Objectors: Louise Crisp represented by Marc Noyce, Tom Cameron, Adam Cairns & Michelle O'Connell, Lisa Christina Roseman, Kirby Luke Armstrong, Nicole Ann Thompson, William (Bill) Donald Flack, Margaret Hallett

Officers: Anthony Basford, Chief Executive Officer; Jodie Pitkin, General Manager Place & Community; Nicole Reynolds, Acting Manager Planning; Robert Pringle, Statutory Planning Coordinator; Emine Mestan, Acting Senior Land Use Planner

1.3 DECLARATIONS OF CONFLICT OF INTERESTS

NIL -

1.4 ACKNOWLEDGEMENT OF COUNTRY

1.5 CLARIFICATION

Jodie Pitkin, General Manager Place & Community provided some clarification regarding:

1. Decision not to change the date for the planning consultation meeting.
2. Discussion and investigation regarding conflict of interest of a Councillor.
3. Discussion regarding privacy concerns raised by the objectors. An assessment has been made that no privacy breaches have occurred, as officers managed the information to ensure captured information was limited as if the viewing was done in-office, as is prescribed by the Planning & Environment Act 1987.

2. REPORTS/PRESENTATIONS

2.1 PLANNERS REPORT

Emine Mestan – Acting Land Use Planning Officer

Provided background of the site location, planning controls, proposal details and summary of the number and content of objections and submissions. Included in the summary was a history of the prior permit application and VCAT ruling for a similar proposal on the site, and clarification of what modifications have been made to the proposal.

Q: Cr. Stow

Sewerage – 200 allotments close to Bairnsdale

Mrs. Mestan: Land Capability Assessment has been accepted. Effluent and building envelope site plan proves that there is space available.

Does Clifton West road also need to be updated?

Mrs. Mestan – intersection will be upgraded.

Cr. Crooke

Q: Concerning that the waterway management plan will be deferred to a later date.

A: it is not abnormal for the waterway management plan to be asked for as a condition. Similar to a construction management plan. The designs have been improved over the previous.

2.2 APPLICANT PRESENTATION

Chris Curnow – Beveridge Williams

Provided some responses to the above questions, noting that the land would need to be greater than 8000 sqm to be subdivided further, and that the predicted traffic impact would not exceed the design capacity of Clifton West road at current.

Provided a summary of the proposal, inclusive of points which have been altered since the last application was determined.

Provided a high level response to the objector's concerns.

Q: Cr Reeves

Relating to indicative envelope and transpiration areas. Some of these abut footpaths and roads. What happens during maintenance, and would they have any impacts on these public assets.

A: Mr Curnow. Secondary treatment is required, which are pumped systems. The envelopes show the absolute worst case scenarios – slopes, size of dwelling, and soils.

Q. Cr. Crook

Will the area of public open space be sufficient?

A: Mr Curnow – area was not required under the SIA, but Council officers in the previous application asked for such a size

Q. Cr. Urie

Is there room in the road reserves for things like public bus stops.

A: Yes – two road intersection connections, allows for flow. No area was designated by DoTransport – but road speed limit would accommodate a bus stop safely.

Q. Cr. Buckley

Have we provided space for the dogs and trees?

A: footpath provision on one side of each road, and footpaths in a reserve, with trees to be planted.

Q. Cr. Geracen

There appear to be significantly steep blocks, will the sites be suitable for development, maintenance of the lots, sewerage, etc?

A: There has been some debate about design in relation to the significant gully – blocks have been made larger – management of the site in less ownership – potentially easier overall to manage the land and waterways. Mandatory building envelopes are a potential outcome through permit conditions and maintain plantings.

2.3 REFERRAL AUTHORITY

Gavin Sherriff – Jemena

Longford-Sydney high pressure gas transmission line. Noting that several conditions are required, such as construction management plan, traffic safety, ensuring no easements affected by stormwater runoff, plantings, etc. Easement crossing 6 total allotments, with a building envelope to be established on the affected lots.

2.4 OBJECTOR PRESENTATIONS

- **Tom Cameron**

Largest rural subdivision presented to Council. Population similar size to Bruthen – to far out of town. Living at Wy Yung 40 years. Adjoins the site for 1.3km

Flaws in advertising. Permit description
Lack of services – amenities, sewerage
Traffic considerations through to Bairnsdale CBD

- **Adam Cairns & Michelle O'Connell**

Over-development concerns – roads, services
Safety concerns
Water management plan and potential damage

- **Lisa Christina Roseman**

Procedural questions and traffic management
Councillor Buckley's Conflict of Interest
Have Councillors personally viewed the site?
Roads – what peak traffic times were recorded? Not representative of true peak times
Volume of site

Cr Urie – questions to be answered outside forum

- **Kirby Luke Armstrong**

Concerns that the uproad developments haven't been added
Where would a bus go?
Is it too far for people to walk?
Lifestyle - moved from city to country
Slope of land – impact building envelope, septic and cost of building
Have councillors personally viewed site?

- **Nicole Ann Thompson**

Lack of open space and infrastructure
Foot path and walkability connection limited
No playground
Bus stop concerns and vehicle dependency
Block sizes due to slope
Septic poorly planned
Steepness of blocks
Risk Assessment and Doyle reports contradict each other
Flora and Fauna assessment, protection of waterways and cultural heritage

Q. Cr Crook – What are the dates of the geotechnical and Doyle reports?

A. Doyle report was completed post VCAT hearing, does not have the geotechnical risk assessment report date on hand. Assume they were completed years apart.

Q. Cr Crook – Are the reports addressing the same criteria?

A. Doyle report much shorter and argues the point of the risk assessment. Does not understand the purpose of this report.

Q. Cr Crook – still confused. Will follow up at a later time.

- **William (Bill) Donald Flack**

Septic concerns

Trust issue

Block size differentials – large to very small (due to septic overlays)

Overdeveloped and unnecessary

Q. Cr Crook – option to connect to reticulated sewerage? Current problems with septic tanks in other subdivisions.

A. R.Pringle – subdivision application referred to EGW. Sewerage type dependent on size of development. Could result in over development if septic not used.

Q. Kirby Armstrong – what is the minimum block size regardless if reticulated or septic?

A. Minimum lot size if serviced by sewerage is 2,000 sq metres, if unserviced on site sewerage it is under 4,000 sq metres.

- **Margaret Hallett**

Current traffic concerns and speed of vehicles, Bullumwaal Road main thoroughfare for the increased traffic

Need to plan as a “whole” and consequences in 50 years

Decline in fauna

Cr. Buckley left the meeting at 7:40 pm

- **Louise Crisp – represented by Marc Noyce**

Sediment Management Control Plan - how is this going to be managed? - construction of site, sediment run off during road and wetlands.

Further details required for water management in relation to erosion and sediment

Environmental risk management - management and accountability

Mr. Basford advised that Cr. Buckley left the meeting due to discussions regarding Conflict of Interest at 7:40 pm

2.5 CLOSING COMMENTS

Mrs Mestan advised that a detailed assessment of the planning application would proceed, taking into consideration all of the content of the evening's proceedings. Further information may be requested of the applicant. The application will eventually be reported to a Council meeting for a determination. Further notification to the public is unlikely, however there will be advice sent when the application is brought before Council.

3. MEETING CLOSE

The meeting closed at 7:52 PM



Department of Transport

GPO Box 2392
Melbourne, VIC 3001 Australia
Telephone: +61 3 9651 9999
www.transport.vic.gov.au
DX 201292

Kerry Stow
East Gippsland Shire Council
273 Main Street
Bairnsdale VIC 3875

Dear Kerry

PLANNING APPLICATION No.: 475/2020/P
DEPARTMENT REFERENCE NO: PPR 34894/20
PROPERTY ADDRESS: 30 CLIFTON WEST ROAD, WY YUNG VIC 3875

Section 55 – No objection subject to conditions

Thank you for your referral dated 15 December 2020 of the above application to the Head, Transport for Victoria under Section 55 of the *Planning and Environment Act 1987*.

The traffic impact assessment provided with the application has shown a traffic movement in the order of 1,284 VPD entering onto Clifton West Road which adjoins Bullumwaal Road. Although a sidra analysis has been performed at the intersection of Clifton West Road and Bullumwaal Road, there has been no assessment against the required turn warrants.

The Head, Transport for Victoria has considered this application and does not object if the permit is subject to the following conditions:

1. **At the intersection of Clifton West Road and Bullumwaal Road, a right turn lane short CHR(s) and an Auxiliary left turn lane generally in accordance with the Austroads guidelines must be constructed.**
2. **At the intersection, a splitter island must be provided.**
3. **The intersection is to be provided with V3 roadway lighting to the satisfaction of the Department.**
4. **Prior to the statement of compliance of stage 1, a detailed functional layout in accordance with Eastern Regions Developer funded checklist must be submitted and approved by the Head, Transport for Victoria.**
5. **Prior to the certification of stage 2, detail design plans in accordance with Eastern Regions Developer funded checklist must be submitted and approved by the Head, Transport for Victoria.**
6. **Prior to the issue of a statement of compliance for stage 2, the intersection works at Clifton West Road and Bullumwaal Road must be completed at no cost and to the satisfaction of the Department.**



7. Prior to works beginning in the road reserve, detail plans in accordance with Eastern Regions Developer funded checklist must be submitted and approved by the by the Head, Transport for Victoria.
8. Prior to intersection roadwork design plans being prepared, a pre-design meeting with the Department of Transport must be attended.
9. The subdivision must proceed in the order of stages as shown on the endorsed plan unless otherwise agreed in writing by the Responsible Authority and the Head, Transport for Victoria.
10. Prior to commencement of the development hereby approved a truck wheel-wash must be installed at the property boundary to enable all mud and other tyre borne debris from vehicles to be removed prior to exiting the land.
11. The truck wheel-wash must be maintained in good order during the construction phase of the development and may be removed at the end of the construction phase of the development with the prior approval of VicRoads.

NOTE:-

- Separate consent for works within the road reserve and the specifications of these works is required under the Road Management Act. For the purposes of this application the works will include provision of:
 - Right turn lane
 - Left turn lane
 - Roadway Lighting
 - Splitter island

Please forward a copy of any decision to this office as required under the *Planning and Environment Act 1987*.

Should you have any enquiries regarding this matter, please contact Stuart Fenech on 5172-2693 or Stuart.Fenech@roads.vic.gov.au.

Yours sincerely



Chris Padovan

Team Leader – Integrated Transport & Land Use
Under delegation from the Head, Transport for Victoria
13 / 01 / 2021

cc: Permit applicant



12th January 2021

East Gippsland Shire Council
PO Box 1618
Bairnsdale VIC 3875

Attention: Planning Department

Dear Sir / Madam

**Re: 475/2020/P - 30 Clifton West Road WY YUNG –
Subdivision of land, roadworks and removal of
vegetation.**

Eastern Gas Pipeline
Joint Venture

Jemena Eastern Gas Pipeline (1)
Pty Ltd
ABN 15 068 570 847
Jemena Eastern Gas Pipeline (2)
Pty Ltd
ABN 77 006 919 115

Level 16, 567 Collins Street
Melbourne, VIC 3000
PO Box 16182
Melbourne, VIC 3000
T +61 3 9173 7000
F +61 3 9173 7516
www.jemena.com.au

I refer to the email received from Kerry Stow on behalf of the East Gippsland Shire Councils Planning department dated 15th of December 2020, regarding the proposed subdivision at the above location.

Jemena Asset Management Pty Ltd on behalf of Jemena Eastern Gas Pipeline (1) and (2) Pty Ltd (collectively Jemena) Whilst Jemena does not object to the proposed subdivision we wish to place the following provisions regarding to the proposed Multi-Lot subdivision as there is pre-existing high pressure gas main located in this area whereby Jemena possesses statutory rights to occupy the Land to operate and maintain the gas pipeline.

Jemena's provisions are as follows:

- Jemena requires a construction safety management study (SMS) to determine threats and controls. This will be required once civil contractors have been awarded the works
- Jemena accepts the two road crossings, but will be subject to a review of detail designs by Jemena, these road crossings may require concrete protection slabbing and further integrity testing of the pipeline at the proponents expense
- The location of effluent systems adjacent to the pipeline easement will be subject to a review of detail designs by Jemena, as excavation adjacent to the pipeline may have a detrimental effect, and discharge of the effluent systems over the easement is not allowed
- The creation of wetlands and retarding basin on or near the easement may requires clarification.
- Access along easement (gates at fence lines) through the created allotments may require LCA consideration, additionally the style of fencing crossing the easement will need to be considered by Jemena, ideally wire stock fencing or similar
- Allotments, 212, 213, 214, 303, 304 and 305 will be subject to subject to Jemena approval of any services crossings, or driveway crossings of Jemena's easement. Additionally Jemena will not approve any encroachment

- of Building envelopes over the easement, this includes and not limited to eave and pergola overhangs
- Allotments, 212, 213, 214, 303, 304, 305 and 1003, cannot install any structures, this includes and not limited to, sheds, garages, chicken coops, swimming pools and spas over the gas pipeline easement
 - Jemena also reserves the right to limit the vegetation planting within the easement, the planting of large trees, bushes and orchards will not be allowed
 - During the construction of the subdivision the easement boundaries are to be clearly marked by flagging and or temporary fencing to ensure the safety of the gas pipeline from heavy machinery
 - All subdivision works around the gas pipeline easement should refer to Jemena's *GUIDELINE TO DESIGNING, CONSTRUCTING AND OPERATING AROUND EXISTING AS2885 NATURAL GAS PIPELINES GAS-960-GL-PL-001* (attached)

Jemena is willing to discuss the provisions further in consultation with the applicant and the East Gippsland Shire council.

If you have any queries, or require any additional information, please do not hesitate to contact me.

Yours faithfully,



Gavin Sherriff
Lands Management – EGP VIC/NSW

Jemena
Level 16, 567 Collins Street, Melbourne VIC 3000
P: 03 9173 7825 M: 0428 805 300
gavin.sherriff@jemena.com.au



Our Ref: DOC/21/12830

17 March 2021

East Gippsland Shire Council
(planning@egipps.vic.gov.au)

133 Macleod Street, PO Box 52, Bairnsdale Victoria 3875
Tel: (03) 5150 4444 Fax: (03) 5150 4477
Email: egw@egwater.vic.gov.au Web: www.egwater.vic.gov.au

EGSC REFERENCE NUMBER(S): 475/2020/P
FOR: SUBDIVISION OF LAND INTO 208 LOTS
LOCATION: 30 CLIFTON WEST ROAD WY YUNG (LOTS 1 & 2 TP 663976, LOT 2 LP 146101)
APPLICANT: WOODY GROUP PTY LTD

In response to your email of 17 February 2021, regarding the above Planning Permit application, East Gippsland Water does not object provided the permit is subject to the following conditions:

1. Water reticulation infrastructure must be extended to service each Lot to East Gippsland Water's requirements, at the cost of the Applicant/Developer. Subject to East Gippsland Water's requirements being met, relevant infrastructure will then become Gifted Assets (refer Notes). Each Lot is to be separately serviced by the water reticulation system and able to be separately metered.
2. Arrangements for the design, construction, commissioning and acceptance of all Gifted Assets required by East Gippsland Water to extend water services to each lot require written approval by East Gippsland Water. Design drawings to be sent to developerworks@egwater.vic.gov.au after Certification Application has been made.
3. If the existing dwelling is retained, the current water meter (#96837) is to be relocated to within the boundaries of the relevant lot. If existing dwelling is removed, the current water meter is to be disconnected and returned to East Gippsland Water.
4. Provide easements on the plan of subdivision over newly created or existing infrastructure, as required by East Gippsland Water.
5. Payment of applicable Development Planning Charges by the Applicant/Developer to East Gippsland Water (refer Notes)
6. Any additional infrastructure required to adequately service the development would need to be provided by the developer at the developer's cost. The type and extent of additional infrastructure, if needed, is subject to detailed engineering design and approval by East Gippsland Water.

Notes:

- (A) Subject to its written acceptance of the Gifted Assets, East Gippsland Water will become responsible for ownership and the ongoing maintenance and operation of the assets in perpetuity.
- (B) Development Planning Charges apply where East Gippsland Water are involved in the developer's works (actual charge is based on the final cost of the works). Contact East Gippsland Water for further information on these fees.

Further enquiries may be directed to Gary Pini (5150 4421) at our Bairnsdale Office.





Yours faithfully,

A handwritten signature in black ink, appearing to read "CAROL ROSS".

CAROL ROSS
EXECUTIVE MANAGER CUSTOMERS

133 Macleod Street, PO Box 52, Bairnsdale Victoria 3875
Tel: (03) 5150 4444 **Fax:** (03) 5150 4477
Email: egw@egwater.vic.gov.au **Web:** www.egwater.vic.gov.au

Cc: Woody Group Pty Ltd C/- Beveridge Williams & Co Pty Ltd (curnowc@bevwill.com.au)



EAST GIPPSLAND
CATCHMENT
MANAGEMENT
AUTHORITY



574 Main Street
(PO Box 1012)
Bairnsdale Vic 3875
PHONE: (03) 5152 0600
FAX: (03) 5150 3555
EMAIL: egcma@egcma.com.au
ABN 72 411 984 201

EGCMA Ref: EGCMA-F-2020-00284
Document No: 03
Date: 11 May 2021

OFFICIAL

Emine Mestan
Land Use Planner
East Gippsland Shire Council

Dear Emine,

Planning Permit Application No.: 475/2020/P

Property Street: 30 Clifton West Road Wy Yung Vic 3875
Cadastral: Lot 2 LP146101, Parish of Wy-yung

Applicant(s): Woody Group Pty Ltd C/- Beveridge Williams & Co Pty Ltd

I refer to your correspondence received at the East Gippsland Catchment Management Authority ('the Authority') on 14 April 2021 in accordance with the provisions of Section 55 of the *Planning and Environment Act 1987*. The Authority notes the supplied Indicative Building and Effluent Envelope Plan, Version 13 and the Indicative Subdivision and Staging Plan Ver 17 both dated 26/02/2021 and that the application is for a 208 lot subdivision.

The Authority does not have any official record of flooding for the property.

The Authority is a recommending referral authority for this application. Pursuant to Section 56(1) of the *Planning and Environment Act 1987*, the Authority **does not object** to the issue of a Planning Permit, subject to the following conditions being included in the permit:

1. Prior to the commencement of any works related to the subdivision, a Waterway Management Plan must be endorsed in writing by the East Gippsland Catchment Management Authority. The Waterway Management Plan must provide for a significant improvement in the ecological health of all waterways on the subject land and must include:
 - a. Details of the existing environmental values;
 - b. Details of any initial stabilisation and vegetation works;
 - c. A landscape plan for revegetation of land within a 30 metre buffer of the waterway, drainage corridor and all water quality works, including a species list and proposed density of the plantings. The vegetation must be representative of the Ecological Vegetation Class for the site. The revegetation of land within the 30m buffer of the waterways should comply with the following requirements:
 - i. Channel/Lower Bank Zone - Mass tubestock planting (6/m2) and 800 GSM jutemat where required for stabilisation.
 - ii. Primary Buffer Zone – A minimum 10m wide planted continuous buffer zone is to be established to both sides of the waterway channel, wetland area or other conservation zone. The buffer zone is to be planted at 4/m2 to establish scattered trees, areas of shrubs and ground layer vegetation recreating the prevailing EVC. Existing trees and areas of existing natural vegetation are to be incorporated into the planted buffer zone where possible.

ABN 88 062 514 481

Correspondence PO Box 1374, Traralgon VIC 3844

Telephone 1300 094 262 | Facsimile (03) 5175 7899 | Email westgippy@wgcm.vic.gov.au | Website www.wgcm.vic.gov.au

Traralgon Office 16 Hotham Street, Traralgon VIC 3844 | Leongatha Office Corner Young & Bair Streets, Leongatha VIC 3953

- iii. Secondary Buffer Zone Areas - outside the primary bufferzone/waterway channel/wetlands, but within 30m of the waterway, are also to be revegetated to form a secondary buffer and should focus on providing good ground cover with a density of 2 plants/m² and with a scattered planting of overstorey trees.
 - d. A maintenance plan detailing the sequencing and periods of short, medium and long term actions and the parties responsible for each action.
2. Prior to the issue of a Statement of Compliance for the subdivision, the owner(s) shall enter into an Agreement with the responsible authority pursuant to Section 173 of the Planning and Environment Act 1987 ('the Act') and make application to the Registrar of Titles to have the Agreement registered on the title to the land under Section 181 of the Act. The owner(s) must pay all reasonable costs of the preparation, execution and registration of the Agreement. The Agreement will stipulate that:
- a. A Waterway Management Plan to the satisfaction of the East Gippsland Catchment Management Authority applies to all lots in the plan of subdivision
 - b. The current and future owner(s) of all lots in the plan of subdivision must comply with all requirements of the Waterway Management Plan at all times.

The revegetation of the waterways may have an impact on the achievable BAL rating for lots with proposed building envelopes. An assessment may be needed to determine if the revegetated waterway reserves will result in a BAL of greater than 12.5. If a higher BAL is not acceptable, a 'defendable space' buffer will be required in addition to the 30 metre vegetated waterway buffer.

Pursuant to Sections 64 to 66 of the *Planning and Environment Act 1987*, please ensure that you provide the Authority a copy of your decision in a timely manner to allow for an application for review to VCAT if required.

The Authority **objects** to the issue of the Planning Permit if these conditions are not included.

The attached **explanatory report** provides further detail regarding the Authority's assessment.

Should you have any queries, please do not hesitate to contact Ben Proctor on 1300 094 262 or email planning@wgcm.vic.gov.au. To assist the Authority in handling any enquiries please quote **EGCMA-F-2020-00284** in your correspondence with us.

Yours sincerely,



Adam Dunn
Gippsland Floodplain Officer

Cc: Woody Group Pty Ltd C/- Beveridge Williams & Co Pty Ltd (curnowc@bevwill.com.au)

The information contained in this correspondence is subject to the disclaimers and definitions attached.

EXPLANATORY REPORT

Decision Guidelines

The East Gippsland Catchment Management Authority assesses all applications against the following National, State and Local Policies, Guidelines and Practice Notes:

1. [Technical Flood Risk Management Guideline: Flood Hazard](#) (Australian Emergency Management Institute, 2014)
2. [Victorian Floodplain Management Strategy](#) (Victoria State Government, 2016)
3. Council Planning Schemes ([Planning Schemes Online](#)), including the:
 - i. Planning Policy Framework
 - ii. Local Planning Policy Framework
 - iii. Relevant Zones and Overlays
4. [Guidelines for Coastal Catchment Management Authorities: Assessing development in relation to sea level rise](#) (DSE, 2012)
5. [Applying for a Planning Permit under the Flood Provisions – A Guide for Councils, Referral Authorities and Applicants](#) (DELWP, 2015)
6. [East Gippsland Waterway Strategy](#) (2014-2022)
7. [East Gippsland Regional Catchment Strategy](#) (2013-2019)
8. [East Gippsland Floodplain Management Strategy](#) (2018-2027)

1% AEP³ Flood Level Determination

Floods are classified by the frequency at which they are likely to occur. In Victoria, all proposals for development on floodplains are assessed against a flood that, on average, will occur once every 100 years. A flood of this size has a 1% chance of occurring in any given year and is known as either the 100 year Average Recurrence Interval (ARI⁵) flood or the 1% Annual Exceedance Probability (AEP) flood.

Please note that the 1% AEP flood is the minimum standard for planning in Victoria and is not the largest flood that could occur. There is always a possibility that a flood larger in height and extent than the 1% AEP flood may occur in the future.

The Authority does not have any information regarding whether this property would be subject to riverine inundation during a 1% Annual Exceedance Probability (AEP³) flood event (commonly known as the 1 in 100 year flood). The property is more than 240 metres from the 1% AEP flood extent, however a number of designated waterways are located within the property as shown in Figure 1. The property may be subject to localised flooding from these designated waterways during periods of high rainfall. However, the Authority does not have any information about the level and extent of this flooding.

The Authority holds no information in relation to the arrangement and capacity of stormwater drainage infrastructure in the area.

Waterways and buffers

A number of designated waterways are located in the proposed area. Clause 14.02- 1S (Catchment planning and management) of the Planning Policy Framework (PPF) seeks to assist the protection and restoration of catchments, water bodies, groundwater and the marine environment through the following strategies:

- Ensure the continued availability of clean, high-quality drinking water by protecting water catchments and water supply facilities.
- Consider the impacts of catchment management on downstream water quality and freshwater, coastal and marine environments.
- Retain natural drainage corridors with vegetated buffer zones at least 30 metres wide along each side of a waterway to:
 - Maintain the natural drainage function, stream habitat and wildlife corridors and landscape values,
 - Minimise erosion of stream banks and verges, and
 - Reduce polluted surface runoff from adjacent land uses.
- Undertake measures to minimise the quantity and retard the flow of stormwater runoff from developed areas.
- Encourage measures to filter sediment and wastes from stormwater prior to its discharge into waterways, including the preservation of floodplain or other land for wetlands and retention basins.
- Ensure that works at or near waterways provide for the protection and enhancement of the environmental qualities of waterways and their instream uses.
- Ensure land use and development proposals minimise nutrient contributions to water bodies and the potential for the development of algal blooms.
- Require appropriate measures to restrict sediment discharges from construction sites.
- Ensure planning is coordinated with the activities of catchment management authorities.

The East Gippsland Catchment Management Authority's Waterway Strategy (2014-2022) also states that 'riparian corridors along waterways play an important role in maintaining and improving waterway health. The maintenance and restoration of riparian corridors are essential to provide the appropriate environmental conditions'. Ephemeral waterways or natural drainage corridors serve as conduits for conveying and treating rainfall runoff. While some minor waterways may have low environmental values, their function in conveying and treating runoff from surrounding catchments into major waterways plays a significant Floodplain Management and River Health role.

To ensure the long term protection of designated waterways and to minimise future maintenance requirements for any reserves created over the waterways, a Waterway Management Plan is required.

The revegetation of the waterways may have an impact on the achievable BAL rating for lots with proposed building envelopes. An assessment may be needed to determine if the revegetated waterway reserves will result in a BAL of greater than 12.5. If a higher BAL is not acceptable, a 'defendable space' buffer will be required in addition to the 30 metre vegetated waterway buffer.

Definitions and Disclaimers

1. The area referred to in this letter as the 'proposed development location' is the land parcel(s) that, according to the Authority's assessment, most closely represent(s) the location identified by the applicant. The identification of the 'proposed development location' on the Authority's GIS has been done in good faith and in accordance with the information given to the Authority by the applicant(s) and/or the local government authority.
2. While every endeavour has been made by the Authority to identify the proposed development location on its GIS using VicMap Parcel and Address data, the Authority accepts no responsibility for or makes no warranty with regard to the accuracy or naming of this proposed development location according to its official land title description.
3. **AEP** as Annual Exceedance Probability – is the likelihood of occurrence of a flood of given size or larger occurring in any one year. AEP is expressed as a percentage (%) risk and may be expressed as the reciprocal of ARI (Average Recurrence Interval).

Please note that the 1% probability flood is not the probable maximum flood (PMF). There is always a possibility that a flood larger in height and extent than the 1% probability flood may occur in the future.

4. **AHD** as Australian Height Datum - is the adopted national height datum that generally relates to height above mean sea level. Elevation is in metres.
5. **ARI** as Average Recurrence Interval - is the likelihood of occurrence, expressed in terms of the long-term average number of years, between flood events as large as or larger than the design flood event. For example, floods with a discharge as large as or larger than the 100 year ARI flood will occur on average once every 100 years.
6. Nominal Flood Protection Level – is the minimum height required to protect a building or its contents, which includes a freeboard above the 1% AEP flood level.
7. No warranty is made as to the accuracy or liability of any studies, estimates, calculations, opinions, conclusions, recommendations (which may change without notice) or other information contained in this letter and, to the maximum extent permitted by law, the Authority disclaims all liability and responsibility for any direct or indirect loss or damage which may be suffered by any recipient or other person through relying on anything contained in or omitted from this letter.
8. This letter has been prepared for the sole use by the party to whom it is addressed and no responsibility is accepted by the Authority with regard to any third party use of the whole or of any part of its contents. Neither the whole nor any part of this letter or any reference thereto may be included in any document, circular or statement without the Authority's written approval of the form and context in which it would appear.
9. The flood information provided represents the best estimates based on currently available information. This information is subject to change as new information becomes available and as further studies are carried out.
10. Please note that land levels provided by the Authority are an estimate only and should not be relied on by the applicant. Prior to any detailed planning or building approvals, a licensed surveyor should be engaged to confirm the above levels.



Department of Environment, Land, Water & Planning

23 December 2020

Emine Mestan
Planning Officer
East Gippsland Shire Council
PO Box 1618
BAIRNSDALE VIC 3875

Our ref: SP474324
Your ref: 475/2020/P

Dear Emine

**PLANNING PERMIT APPLICATION 475/2020/P
MULTI-LOT SUBDIVISION, ROADWORKS AND VEGETATION REMOVAL
30 CLIFTON WEST ROAD, WY YUNG
LOT 1 & 2 TP663976 AND LOT 2 LP146101**

Thank you for your correspondence dated and received 15 November in respect of the above-described application.

The Department of Environment, Land, Water and Planning (DELWP) has considered the above application in accordance with section 52 of the *Planning and Environment Act 1987* (Act), with the specific referral trigger being section 52 (1) (d) of the Act.

The application seeks to undertake a multi-lot subdivision including roadworks and vegetation removal within the Low Density Residential and Farming Zones and affected by Schedule 1 of the Vegetation Protection Overlay and the Erosion Management Overlay.

DELWP offers the following comments in respect of the above described application.

- The proposal involves a multi-lot subdivision with ten stages, roadworks and vegetation removal. Tree 6 is a small scattered tree located within a proposed roadway and is the only native vegetation removal proposed for the site. This means the remaining 38 existing indigenous trees are to remain as described in Table 3 Tree Census Data for 30 Clifton West Road, Wy Yung - *Practical Ecology Flora and Fauna Assessment 30 Clifton West Road, Wy Yung*, November 2017. Nine of these trees are regarded as Large Old Trees.
- None of these 38 trees have been provided with any specific protection either during or after subdivision construction. DELWP notes that numerous trees are located along proposed allotment boundaries and hence their removal may be exempt from a planning permit and offsetting. It is recommended that the responsible authority apply protection measures for this native vegetation particularly any large old trees.

Privacy Statement

Any personal information about you or a third party in your correspondence will be protected under the provisions of the Privacy and Data Protection Act 2014. It will only be used or disclosed to appropriate Ministerial, Statutory Authority, or departmental staff in regard to the purpose for which it was provided, unless required or authorised by law. Enquiries about access to information about you held by the Department should be directed to foi.unit@delwp.vic.gov.au or FOI Unit, Department of Environment, Land, Water and Planning, PO Box 500, East Melbourne, Victoria 8002.



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- Lots 108-118 are some of the smallest allotments proposed and they contain a linear corridor of native vegetation along their northern boundary. It is recommended that the responsible authority apply protective measures on this native vegetation or if any building and effluent envelopes impact on TPZ's, then assumed loss of native vegetation applies and an updated Native Vegetation Removal Report is required.

Clause 42.02 Vegetation Protection Network *Tambo-Bairnsdale Roadside Vegetation Protection Network*

The above overlay seeks to protect high conservation value roadside vegetation and applies along the Clifton West Road frontage abutting Lots 101 -108 and 417 -419. Tree protection zones (TPZ) will need to be added to the site plan and if any building and effluent envelopes impact on TPZ's, then assumed loss of native vegetation applies and an updated Native Vegetation Removal Report is required. Supplementary planting in and adjacent to the roadside should also be considered to assist in achieving the objectives of Schedule 1 to Clause 42.02.

I wish to advise DELWP has no objection to the granting of a permit for the above application and makes the following recommendations:

1. Before works start, the permit holder must advise all persons undertaking the vegetation removal or works on site of all relevant permit conditions and associated statutory requirements or approvals.
2. The Department of Environment Land Water and Planning native vegetation report (ID: 319-20201106-002, dated 6/11/2020) included with the application will be endorsed and form part of this permit.
3. Before works start, plans to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the responsible authority will endorse the plans, which will then form part of this permit. The plans must include:
 - a) a detailed description of the measures to be implemented to protect the native vegetation to be retained during construction works, and the person/s responsible for implementation and compliance. These measures must include the erection of a native vegetation protection fence around all native vegetation to be retained on site, to the satisfaction of the responsible authority, including the tree protection zones of all native trees to be retained. All tree protection zones must comply with AS 4970-2009 *Protection of Trees on Development Sites*
 - b) an amended site plan, drawn to scale with dimensions and georeferences (such as VicGrid94 co-ordinates), that clearly shows:
 - i) the location and identification of the land affected by this permit, including standard parcel identifiers for freehold land
 - ii) the location and area of all native vegetation present, including scattered trees, that are permitted to be removed under this permit
 - iii) all areas of native vegetation to be retained, including roadside native vegetation with tree protection zones extending onto the subject land.
4. Except with the written consent of the responsible authority, within the area of native vegetation to be retained and any tree or vegetation protection zone associated with the permitted use and/or development, the following is prohibited:
 - a) vehicular or pedestrian access

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- b) trenching or soil excavation
- c) storage or dumping of any soils, materials, equipment, vehicles, machinery or waste products
- d) entry and exit pits for the provision of underground services
- e) any other actions or activities that may result in adverse impacts to retained native vegetation.

Native vegetation permitted to be removed, destroyed or lopped

5. The native vegetation permitted to be removed, destroyed or lopped under this permit is 0.031 hectares of native vegetation, which is comprised of:
 - a) 1 scattered small tree

Native vegetation offsets

6. To offset the removal of 0.0031 hectares of native vegetation, the permit holder must secure the following native vegetation offset in accordance with *Guidelines for the removal, destruction or lopping of native vegetation* (DELWP 2017):
 - a) a general offset of 0.006 general habitat units:
 - i) located within the East Gippsland Catchment Management boundary or East Gippsland municipal area
 - ii) with a minimum strategic biodiversity value of at least 0.320,
7. Before the issue of a Statement of Compliance, evidence that the required offset for stage 7 of the subdivision has been secured must be provided to the satisfaction of the responsible authority. This evidence must be one or both of the following:
 - a) an established first party offset site including a security agreement signed by both parties, and a management plan detailing the 10-year management actions and ongoing management of the site, and/or
 - b) credit extract(s) allocated to the permit from the Native Vegetation Credit Register.

Offset evidence

8. A copy of the offset evidence will be endorsed by the responsible authority and form part of this permit. Within 30 days of endorsement of the offset evidence, a copy of the endorsed offset evidence must be provided to Planning & Approvals at the Department of Environment, Land, Water and Planning Traralgon regional office via gippsland.planning@delwp.vic.gov.au.

First party offset reporting

9. Where the offset includes a first party offset, the permit holder must provide an annual offset site report to the responsible authority by the anniversary date of the execution of the offset security agreement, for a period of 10 consecutive years. After the tenth year, the landowner must provide a report at the reasonable request of a statutory authority.

Please provide a copy of the permit, if one is granted, or any notice to grant or refusal to grant a permit to the address or email below.

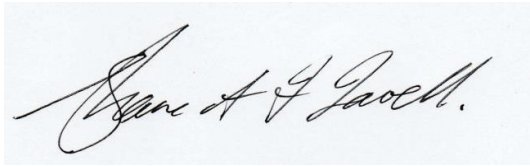
All written correspondence should be sent electronically to gippsland.planning@delwp.vic.gov.au or mailed to:

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Planning Approvals Gippsland
Department of Environment, Land, Water & Planning
71 Hotham Street
TRARALGON VIC 3844

If you have any queries regarding this matter, please contact Planning Approvals - Gippsland at the department's Traralgon office on (03) 5172 2111.

Yours sincerely

A handwritten signature in black ink, reading "Shane A. Lavell", is displayed on a light blue rectangular background.

Shane Lavell
Planning Approvals Program Officer

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cfa.vic.gov.au

Our patron, Her Excellency the Honourable Linda Dessau AC, Governor of Victoria

CFA Fire Prevention and Preparedness
8 Lakeside Drive Burwood East Vic 3151
Email: firesafetyreferrals@cfa.vic.gov.au

CFA Ref: 11000-66115-108991
Council Ref: 475/2020/P

23 April 2021

Emine Mestan
East Gippsland Shire Council
PO BOX 1618
BAIRNSDALE VIC 3875

Dear Emine,

**CONDITIONAL CONSENT TO GRANT A PERMIT INCLUDING
CERTIFICATION HOWEVER COMPLIANCE IS REQUIRED**

Application No: 475/2020/P
Applicant Name: Chris Curnow C/- Beveridge Williams & Co
Site Name: Multi-Lot Subdivision & Road Works
Address: 30 Clifton West Road Wy Yung
Purpose: Multi-Lot Subdivision

CFA, acting as a Referral Authority pursuant to Section 55 of the Planning and Environment Act does not object to the grant of a permit to Beveridge Williams & Co for the subdivision at 30 Clifton West Road Wy Yung subject to the following conditions being attached to any permit which may be issued, and a copy of the permit being forwarded to CFA.

– Start of Conditions –

1. Subdivision plan not to be altered

The subdivision as shown on the endorsed plans must not be altered without the consent of CFA

2. Hydrants

Prior to the issue of a Statement of Compliance under the *Subdivision Act 1988* the following requirements must be met to the satisfaction of the CFA:

- 2.1 Above or below ground operable hydrants must be provided. The maximum distance between these hydrants and the rear of all building envelopes (or in the absence of building envelopes, the rear of the lots) must be 90 metres and the hydrants must be no more than 120 metres apart. These distances must be measured around lot boundaries.
- 2.2 The hydrants must be identified with marker posts and road reflectors as applicable to the satisfaction of the Country Fire Authority.

Note –CFA's requirements for identification of hydrants are specified in 'Identification of Street Hydrants for Firefighting Purposes' available under publications on the CFA web site (www.cfa.vic.gov.au)

3. Roads

Roads must be constructed to a standard so that they are accessible in all weather conditions and capable of accommodating a vehicle of 15 tonnes for the trafficable road width.

- 3.1 The average grade must be no more than 1 in 7 (14.4%) (8.1 degrees) with a maximum of no more than 1 in 5 (20%) (11.3 degrees) for no more than 50 meters. Dips must have no more than a 1 in 8 (12%) (7.1 degree) entry and exit angle.
- 3.2 Curves must have a minimum inner radius of 10 metres.
- 3.3 Have a minimum trafficable width of 3.5 metres and be clear of encroachments for at least 0.5 metres on each side and 4 metres above the access way.
- 3.4 Roads more than 60m in length from the nearest intersection must have a turning circle with a minimum radius of 8m (including roll-over kerbs if they are provided) T or Y heads of dimensions specified by the CFA may be used as alternatives.

– End of Conditions –

Additional Comments

CFA also consents under Section 9 of the Subdivision Act to the Certification of the Plan of Subdivision. CFA does not require the Plan of Subdivision for this planning permit application to be referred under Section 8 of the Subdivision Act.

CFA does not consent to the Statement of Compliance for Subdivision at this stage.

If you wish to discuss this matter in more detail, please do not hesitate to contact Peter Rogasch, Fire Safety Officer, on 0437 012 114

Yours sincerely



Justin Meli
Bushfire Planning Coordinator
FIRE PREVENTION & PREPAREDNESS

cc: Beveridge Williams & Co
 curnowc@bevwill.com.au

From: James Hammond [James.Hammond@ausnetservices.com.au]
Sent: Wednesday, 17 February 2021 1:01:44 PM
To: Planning Unit Administration
Subject: 475/2020/P - 30 Clifton West Road WY YUNG - Multi-lot subdivision and roadworks

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475/2020/P - 30 Clifton West Road WY YUNG - Multi-lot subdivision and roadworks

AUSNET ELECTRICITY SERVICES PTY LTD does not object to the issue of a Planning Permit in respect of the abovementioned application if the permit is subject to the following conditions:

The Plan of Subdivision submitted for certification must be referred to AUSNET ELECTRICITY SERVICES PTY LTD in accordance with Section 8 of the Subdivision Act 1988.

The applicant must –

- Enter in an agreement with AUSNET ELECTRICITY SERVICES PTY LTD for supply of electricity to each lot on the endorsed plan.
- Enter into an agreement with AUSNET ELECTRICITY SERVICES PTY LTD for the rearrangement of the existing electricity supply system.
- Enter into an agreement with AUSNET ELECTRICITY SERVICES PTY LTD for rearrangement of the points of supply to any existing installations affected by any private electric power line which would cross a boundary created by the subdivision, or by such means as may be agreed by AUSNET ELECTRICITY SERVICES PTY LTD.
- Provide easements satisfactory to AUSNET ELECTRICITY SERVICES PTY LTD for the purpose of “Power Line” in the favour of “AUSNET ELECTRICITY SERVICES PTY LTD” pursuant to Section 88 of the Electricity Industry Act 2000, where easements have not been otherwise provided, for all existing AUSNET ELECTRICITY SERVICES PTY LTD electric power lines and for any new power lines required to service the lots on the endorsed plan and/or abutting land.
- Obtain for the use of AUSNET ELECTRICITY SERVICES PTY LTD any other easement required to service the lots.
- Adjust the position of any existing AUSNET ELECTRICITY SERVICES PTY LTD easement to accord with the position of the electricity line(s) as determined by survey.
- Set aside on the plan of subdivision Reserves for the use of AUSNET ELECTRICITY SERVICES PTY LTD for electric substations.
- Provide survey plans for any electric substations required by AUSNET ELECTRICITY SERVICES PTY LTD and for associated power lines and cables and executes leases for a period of 30 years, at a nominal rental with a right to extend the lease for a further 30 years. AUSNET ELECTRICITY

SERVICES PTY LTD requires that such leases are to be noted on the title by way of a caveat or a notification under Section 88 (2) of the Transfer of Land Act prior to the registration of the plan of subdivision.

- Provide to AUSNET ELECTRICITY SERVICES PTY LTD a copy of the plan of subdivision submitted for certification that shows any amendments that have been required.
- Agree to provide alternative electricity supply to lot owners and/or each lot until such time as permanent supply is available to the development by AUSNET ELECTRICITY SERVICES PTY LTD. Individual generators must be provided at each supply point. The generator for temporary supply must be installed in such a manner as to comply with the Electricity Safety Act 1998.
- Ensure that all necessary auditing is completed to the satisfaction of AUSNET ELECTRICITY SERVICES PTY LTD to allow the new network assets to be safely connected to the distribution network.

END OF CONDITIONS

It is recommended that, at an early date the applicant commences negotiations with AUSNET ELECTRICITY SERVICES PTY LTD for a supply of electricity in order that supply arrangements can be worked out in detail, so prescribed information can be issued without delay (the release to the municipality enabling a Statement of Compliance with the conditions to be issued).

Arrangements for the supply will be subject to obtaining the agreement of other Authorities and any landowners affected by routes of the electric power lines required to supply the lots and for any tree clearing.

Prospective purchasers of lots on this plan should contact this office to determine the availability of a supply of electricity. Financial contributions may be required.

If you require any further information in relation to the above, please do not hesitate to contact myself on 9237 4496 at the Lilydale Office.

Yours faithfully,

James Hammond
URD EPC
AusNet Services
9237 4496

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From: Subdivisions [Subdivisions@apa.com.au]
Sent: Wednesday, 13 January 2021 10:10:57 AM
To: Planning Unit Administration; Subdivisions
Subject: RE: 475/2020/P - 30 Clifton West Road WY YUNG - Multi-lot subdivision and roadworks

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APA GROUP
APT O&M Services Pty Ltd (APT) is a company under the APA Group.

Our Reference: ps 13.01.2021 -01

Enquires: Paula Soluncevski
Telephone 9463 8323

Dear Sir/Madam,

Re: **APPLICATION FOR PLANNING PERMIT**
30 CLIFTON WEST ROAD WYYUNG
Plan No. :

Reference is made to the above correspondence dated 10.11.2020 and accompanying plan.

APT pursuant to Section 56 (1) (b) of the Planning and Environment Act 1987 has no objection to the granting of a permit.

APT does not require the plan to be forwarded under Section 8 of the Subdivision Act 1988, and consents to the issue of a statement of compliance at the appropriate time.

Yours faithfully,

Per
Rebecca May
Planning Manager
Planning & Engineering

475/2020/P**30 Clifton West Road WY YUNG 3875****Multi-lot subdivision, roadworks and removal of vegetation****PLANNING CONTROLS**

Control	Clause	Consideration
Low Density Residential Zone	32.03	A permit is required to subdivide land.
Vegetation Protection Overlay (Schedule 1)	42.02	A permit is required to remove, destroy or lop any vegetation specified in a schedule to this overlay.
Erosion Management Overlay	44.01	A permit is required to subdivide land. A permit is required to remove, destroy or lop any vegetation. A permit is required for roadworks
Native Vegetation	52.17	A permit is required to remove, destroy or lop any vegetation, including dead native vegetation.
Decision Guidelines	65.02	Decision Guidelines – Subdivision.

The application under assessment does not require assessment under the Stormwater Management in Urban Development, Clause 53.18 Particular Provisions, by virtue of the exemption under the provision for applications to subdivide land under a provision of the Low Density Residential Zone.

Cultural sensitivity

The applicant has provided a Cultural Heritage Management Plan with recommendation that an area in the south-east portion of the site is to be set aside in reserve in order to protect an artefact scatter found during the course of the site testing. The Plan also recommends that this reserve is not to be accessible to the general public and that only Council officers can only enter to maintain the native vegetation. A 1.42 hectare reserve has been created to facilitate this (refer to **Figure 1** from **Attachment 2** (first link), Planning Submission, Version B, Section 4.8, page 58 of 113).

REFERRAL AUTHORITIES

Authority	Determining or Recommending Authority	Referral Clause	Response
CFA	Rec (s55)	44.06 and 66.03	Conditional consent
DELWP	s52 Notice		Conditional consent
APA Group (Gas Distribution)	Det (s55)	66.01	Conditional consent
Jemena (Gas transmission)	Det (s55)	66.01	Conditional consent
AusNet Services	Det (s55)	66.01	Consent with no conditions

Department of Transport	s52 Notice		Conditional consent
Department of Transport (PTV)	Det (s55)	66.02	No response received
EGW	Det (s55)	66.01	Conditional consent
WGCMA	S52 Notice		Sought further information; amended plans received then provided Conditional consent

INTERNAL ADVICE

Department	Scope of Advice	Outcome
Strategic Planning Department	Bairnsdale Growth Strategy (November 2009)	Consent
Technical Officer - Development	Drainage, Access	Conditional consent
Environmental Health	Sewerage	Consent
Parks and Gardens & Community Planning	open space/parks/landscape	Consent (expressed support for the municipal reserve)
Waste	Environment	Consent
Operations	Civil works	Consent

On 23 December 2020, the Catchment Management Authority (EGCMA) responded to the planning application by requesting additional information relating to an updated subdivision plan showing all designated waterways contained within a Council reserve and a Waterway Management Plan be submitted. As a result, the applicant provided a response that they would be able to place the northern branch of the northern waterway into a Council reserve with an expectation that it will be planted and managed, not to extend the Council reserve any further to the west along the southern waterway, and approach the EGCMA about a 'like for like' payment to fund works/planting elsewhere in the Clifton Creek Catchment in lieu of plantings being made along the section of the southern waterway that will remain in private ownership.

Following discussions between EGCMA and internal Council staff and the applicant around the time of March 2021, additional plans were added to the application that related to the watercourses and agreement of maintenance of vegetation.

On 9 July 2021, four Councillors (Cr Urie, Cr Graecen, Cr Stow & Cr Crook) and officers from the East Gippsland Shire Council attended the site. Additional materials have been provided following the PCM and circulated to Councillors and Objectors. A copy of the additional information is available on Council's [website](#):

The details include:

1. Applicant's response to matters raised by Marc Noyce at the PCM held on 21 June 2021.
2. A revised Stormwater Management Strategy clarifying the issues mentioned in the matters raised by Marc Noyce. The changes occurred on:
 - Page 29, where Table 14 and Figure 15 have been updated to clarify the treatment catchments and reflect the fact that outfall from catchments P2 and V will bypass the southern wetland and outfall from catchment M will bypass the eastern wetland before joining the balance of the outfall again downstream. This outcome was already assumed

in the strategy, just not explicitly stated. So, the drainage assets had already been oversized to accommodate it. As a result it does not lead to any further changes to the strategy; and,

- Pages 28 & 31, where the manner in which rainwater tanks on each property would be used to treat and detain stormwater is more precisely explained.

PUBLIC NOTIFICATION

Advertising Required:

Public notification was undertaken in the form of letters to adjoining landowners in accordance with Section 52 of the *Planning and Environment Act 1987*.

Thirty-two (32) individual objections (**Attachment 3**) were received at the time of writing this report. The application was presented to Council at a Planning Consultation Meeting on Monday 21 June 2021. All objectors interested in presenting an oral submission were afforded the ability to speak. Minutes of the PCM are at **Attachment 4**.

Objections

Issues raised in the objections highlighted concerns relating to the following:

- Increased traffic/safety/vehicle noise
- Lack of public transport in the area
- The sewer system won't be able to cope
- Increased soil erosion
- Poor water management affecting Clifton Creek and adjoining properties
- Stormwater impacts onto Clifton Creek
- Bushfire concerns
- Loss of views
- Increase in Council rates
- Boundary setbacks insufficient
- Intersection to be updated between Salvatore Drive and new thoroughfare into the new subdivision
- Excessive street lighting
- Council reserve to be built
- Size of proposed blocks not providing variety
- Inappropriate and unsustainable development
- Loss of vegetation is a negative outcome in terms of the impact on the biodiversity of the area

Commentary on grounds for objection:

Many of the grounds for objection are valid and reasonable. The character of an area is often difficult to define, however in Wy Yung the character of the existing lot layout is quite apparent (i.e. larger lots above 4,000sqm in size). Below is a response to common concerns:

Loss of views/ Visual impact on landscape

The visual outlook will change, given the low-density nature of the proposed development compared to the existing agricultural conditions. There will still be ample green and open space that will define the landscape.

When a landowner seeks to develop their land in accordance with the planning scheme, inevitably there will be some degree of change experienced by those who own adjoining land. The key test is whether or not the change is positive or negative. On balance of all relevant factors, the net effect of this proposal is positive, and as such the impact on existing views is not enough to warrant a refusal of the proposal.

Noise pollution

Noise emanating from dwellings in a new residential estate is an expected outcome which the planning system does not take into account. Some residents will naturally be quieter or louder than others, however as a matter of personal behaviour it is not a planning-based ground for refusal.

Increase in rates

The claim has been made that the rates of adjoining land will increase should the subdivision proceed. This may occur if property values increase, however that is not a relevant planning consideration.

The number of lots is too high

One of the grounds of objection put forward includes the number of lots being too high, in other words, the density is too high. The underlying zone allows for lots to be created that are minimum 4,000 square meters in size based on the lack of reticulated sewerage. The subdivision has met this requirement, and in fact most lots are significantly higher than the minimum lot size. As such, the subdivision does not represent high density development. In addition, this is an increased average size lots compared to the previous application (application 345/2017/P, which was refused by VCAT).

The Bullumwaal Road/Clifton West Road intersection will become unsafe/road safety generally

VicRoads has requested permit conditions that would bind the applicant to upgrading the Clifton West/Bullumwaal Road intersection. These conditions will require the proponent to upgrade the intersection. In light of this, concerns relating to that intersection can successfully be addressed.

It is considered that no direct access to and from new lots created be allowed onto Clifton West Road, this can be achieved via a permit condition requiring a legal agreement to be entered into requiring access to these lots to be undertaken from the internal road within the subdivision.

Impact on flora and fauna

The vast majority of the land is already cleared of vegetation. The vegetation to be removed involves two dead silver Banksia's and one 'red box' tree.

In terms of impact on fauna, the planning application included a biodiversity report which detailed that there was very little evidence of native fauna coexisting on the subject site.

Pedestrian safety

The proposed subdivision includes provision of a shared walking/cycle path throughout the estate. There is also provision for passive open space in the northern reserves and Municipal Reserve, linking to existing pedestrian trails. General pedestrian safety is not expected to be adversely impacted.

Lack of public transport

The application was referred to the Head, Transport for Victoria but unfortunately no response was received. It is anticipated that bus services would extend to the estate at some point in the future, and the road network would afford the ability for a loop without need for backtracking.

Stormwater impacts

The hydrology and drainage strategy submitted with the application details the manner in which the storm water drainage will be treated, retained and released from the site. The provision of two retention basins along with the required physical infrastructure usually

installed as a part of a residential subdivision, gives rise to confidence that the development will not lead to an unacceptable storm water drainage outcome.

As this was the key ground of refusal by the Tribunal, considerable additional detail has been provided to satisfy the concerns of the Tribunal and objectors in relation to the grant of a permit. It is considered that the additional information surrounding the stormwater regime, specifically the outflow over the Crisp property, combined with the deletion of some lots and improved clarity regarding waterway quality, will provide for suitable development outcomes and will not compromise waterway health and safety.

Lack of open space

The plan of subdivision includes a suitable amount of open space. It is important to note that the average lot size will be at least 5,871sqm in size. It is expected that most lots will leave 80-90% of their footprint undeveloped, providing for private open space. There will be ample 'passive' open space for the future residents to enjoy. The social impact assessment clarifies that the proposal will not put an undue strain on existing regional public open space and amenities.

Boundary setbacks insufficient

The application documentation included a building envelope plan which showed where each lot might contain a dwelling or a shed. Boundary setbacks included in this subdivision are typical of a low-density estate, and based on a planning assessment, they are suitable for support.

Not appropriate for a rural area

The land has been zoned low density residential since the new format planning scheme was adopted in 1999, and similar zoning was provided for in the former Shire of Bairnsdale Planning Scheme. The proposed subdivision, having met the technical requirements established by the LDRZ can be considered on merit.

Although people may feel that the subdivision is not appropriate, the proposal before Council seeks to subdivide land in accordance with the underlying zone. The underlying zone indicates that the outcome is acceptable.

PLANNING CONSIDERATION

Planning Policy Framework (PPF)

The assessment of the application requires assessment against Planning Policy Framework.

The clauses that have an influence upon the assessment of this application include:

- 11 Settlement
- 12 Environmental and Landscape Values
- 13 Environmental Risks and Amenity
- 14 Natural Resource Management
- 15 Built Environment and Heritage
- 16 Housing

Assessment:

Clause 11-01-1S relating to Settlement seeks to promote sustainable growth and development of Victoria and deliver choice and opportunity for all Victorians through a network of

settlements. The proposal responds positively as the subject land is located within an existing rural residential precinct which contains numerous dwellings and is only a short drive from the main commercial precinct of Bairnsdale. It also has access to power, water and telecommunications.

The proposal has taken into consideration Clause 12 relating to Environmental & Landscape Values which seeks to protect the health of ecological systems and the biodiversity they support. This has been achieved by designing the allotments to have sufficient area and dimensions to provide for future residential development that is suitably offset from the existing drainage lines and through limiting the extent of vegetation losses.

Although the subject land is not contained within the Bushfire Management Overlay, there is some risk from bushfire which is identified through the Bushfire Prone mapping. Some consideration has therefore been given to Bushfire at Clause 13.02-1S.

Consideration has been given to Clause 13.04-2S Erosion & Landslip given the sites inclusion within the Erosion Management Overlay. The objective of this Clause is to protect areas prone to erosion, landslip or other land degradation processes which the proposal is considered to achieve.

Clause 15 relates to Built Environment & Heritage and outlines that planning must support the establishment and maintenance of communities by delivering functional, accessible, safe and diverse physical and social environments. The proposal responds positively as it will provide opportunity for further development within an existing rural residential precinct.

Clause 15.01-3S relating to Subdivision Design seeks to ensure the design of subdivisions achieves attractive, safe, accessible, diverse and sustainable neighbourhoods. The proposed subdivision adheres to this objective and relevant supporting strategies as the scheme of subdivision has been designed to ensure each allotment is capable of accommodating future residential development as demonstrated by the accompanying Building Envelope Plan.

Municipal Strategic Statement (MSS)

Council is required to consider Local Policy as a part of this assessment.

Local Policy clauses that are relevant include:

21.03 Settlement

21.04 Environmental and Landscape Values

21.05 Environmental Risk

21.06 Natural Resource Management

21.07 Built Environment and Heritage

21.08 Housing

21.12 Strategies for Sub-Regions, Towns and Localities

Assessment:

Consideration has been given to Clause 21.04-1 relating to Biodiversity, the objectives of which relate to maintaining, conserving and enhancing the biodiversity of East Gippsland and to recognise, protect and maintain environmental, cultural and aesthetic values of East Gippsland. Whilst a small element of vegetation removal forms part of the Application it is minimal in extent and is not remnant.

The proposal responds well to Clause 21.04-3 relating to Urban Waterways as the subdivision has been specifically designed to enable the ability to establish dwellings on each of the allotments which are well setback from the drainage line to maintain its health and integrity.

Clause 21.05-2 relating to Erosion seeks to ensure that land use and development is directed to locations and carried out in ways that minimise its vulnerability to the threat of erosion. The objective and strategies to this Clause are addressed through the inclusion of a Geotechnical Risk Assessment which has been commissioned to support the proposal.

The proposal will allow for an increase in housing density and potential housing diversity as is encouraged in Clause 21.08. In terms of settlement growth, local policy in the East Gippsland Planning Scheme supports this locality to the north west of the existing Bairnsdale settlement as a low density growth area. The Bairnsdale Growth Strategy (November 2009) being the relevant strategic document which is a Reference Document forming part of the Scheme at Clause 21.12 *Strategies for sub-regions, towns and localities*. The Planning Scheme response to this policy position is reflected in the zoning of the land as Low Density Residential Zone. The proposed development aligns with the principle of low-density residential growth in this locality and enjoys strategic policy support.

In relation to the northern growth front the strategy seeks *the provision of pedestrian networks and open space links to assist in north-south movements through the area and into town are a key component of delivering a sustainable neighbourhood outcome in this growth front.*

The proposal responds to integration with road linkages to abutting subdivision where it exists.

Relevant environmental constraints identified in the Bairnsdale Growth Strategy are that:

- appropriate level assessments of native vegetation will be required ahead of any development approvals.
- appropriate level cultural heritage assessments will be required ahead of any development approvals.

The supporting documentation in the planning permit application addresses these matters.

The application has been assessed against both the PPF and LPPF and it is considered that the proposal is consistent with relevant policies contained within this section of the East Gippsland Planning Scheme.

Low Density Residential Zone

The purposes of the LDRZ are:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To provide for low-density residential development on lots which, in the absence of reticulated sewerage, can treat and retain all wastewater.*

The Application triggers approval at Clause 32.03-3 for subdivision of the land in accordance with Low Density Residential Zone provisions. The subdivision has been designed in accordance with the zone requirements by nominating allotments which are greater than 4000m² in area.

The proposed subdivision is considered to respond positively to the purpose of the Low Density Residential Zone as it will result in the creation of allotments which can accommodate lower density residential living with capacity for onsite wastewater disposal.

Accompanying the application is an Indicative Building and Effluent Envelope Plan (**Attachment 2** (fourth link), page 2 of 99), which demonstrates the available area for future residential development. This plan has been prepared having regard for the landform, access points, vegetation, and other significant site features such as drainage lines. There is more than ample area available within each of the demonstrational building envelopes to cater for future development and associated effluent disposal fields.

The proposed subdivision has been designed to minimise vegetation loss across the site. There are a number of proposed lots which contain established native vegetation.

A Land Capability Assessment Report has been commissioned from Strata Consulting ([website](#)) to confirm the sites suitability to treat and retain wastewater on site associated with future residential development of the land.

The Land Capability Assessment Report has been assessed by Environmental Health, confirming the sites suitability to treat and retain wastewater on site associated with future residential development of the land.

The capacity of the road has been assessed by Engineering as being able to accommodate the likely increase in traffic (refer to Traffic and Transport Assessment, **Attachment 2** (fourth link), page 10 of 99).

Additionally, a Soil and Water Management Plan (SWMP) (**Attachment 2** (second link), page 148 of 166) and a Stormwater Management Strategy ([website](#)) has taken a precautionary assessment on the monitoring of excessive runoff that can be implemented with corrective measures via the proposed provision of three retarding basins and four wetlands.

The Decision Guidelines pertaining to the Low Density Residential Zone further detail how the proposed subdivision needs to demonstrate how it enhances the natural environment and character of the area by including the retention of vegetation and faunal habitat and the need to plant vegetation along waterways, gullies, ridgelines and property boundaries. It is also important whether the proposed subdivision can demonstrate the availability and provision of utility services, including sewerage, water, drainage, electricity, gas and telecommunications.

Equally conditions on the permit are considered to appropriately manage stormwater runoff and possible erosion during road construction. A condition on the permit will ensure that appropriate landscaping occurs within the road reserve. For these reasons the application is assessed as being in accordance with the zone requirements.

Erosion Management Overlay

The purposes of the EMO are:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To protect areas prone to erosion, landslip or other land degradation processes, by minimising land disturbance and inappropriate development.*

Apart from the subdivision requiring a planning permit, as roadworks are also proposed, a planning permit is triggered under the EMO. Vegetation removal is also subject to a planning permit trigger unless the vegetation was either planted or grown as a result of direct seeding for crop raising or grazing animal production. The site has a pine plantation located to the south-east corner of the property that will be required for removal to reduce any bushfire risk.

An Erosion, Slope and General Geotechnical Risk Assessment and Management Strategies was provided (**Attachment 2** (second link), page 60 of 166) provided with the erosion and landslip risk assessment includes instructions for how to manage the estate construction so as to avoid causing erosion. The applicant expects that compliance with that report will be enforced through a permit condition. So, it is our expectation that those instructions will be applied within the estate.

Vegetation Protection Overlay, Schedule 1

The Purposes of the VPO are:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To protect areas of significant vegetation.*
- *To ensure that development minimises loss of vegetation.*
- *To preserve existing trees and other vegetation.*
- *To recognise vegetation protection areas as locations of special significance, natural beauty, interest and importance.*
- *To maintain and enhance habitat and habitat corridors for indigenous fauna.*
- *To encourage the regeneration of native vegetation.*

The proposed subdivision does not include the removal, destruction or lopping of any vegetation that is listed in the schedule to the overlay within the portion of the property that is affected by the VPO1. Hence, there is no planning permit triggered against the VPO1 provisions.

Native Vegetation – Clause 52.17

A planning permit is triggered to remove native vegetation, which in this case there is one native scattered paddock tree that might be removed in case the tree cannot be avoided (as it is located within a proposed roadway), thus its removal is part of this application.

The Applicant has provided a Native vegetation removal report and a Flora and Fauna Assessment as part of the initial application documents (**Attachment 2** (second link), pages 1 and 11 of 166).

DELWP was referred and provided conditional consent providing offset requirements and conditions relating to tree protection measures, in particular, that the remaining 38 indigenous trees and vegetation on site that serve a high conservation purpose are provided protection (Tree Protection Zones) during the subdivision construction.

There are also some native trees growing near the common boundary with the Salvatore Drive estate, in which DELWP have required through their permit conditions that any of these trees that are going to be located within 4 metres of one of the new boundaries created by the estate also be offset, given their removal would become exempt under the fencing section of the Table in Clause 52.17 once the new title boundaries are created.

Public Open Space Contribution

Pursuant to Clause **53.01**, a person who proposes to subdivide land must make a contribution to the Council for public open space. However, it is unlikely that each lot will be further subdivided and there are areas set aside for public open space, including provision of extensive shared paths through the subdivision and in reserve areas. No additional cash public open space contribution is considered necessary.

Decision Guidelines for subdivision - Clause 65.02

The Decision Guidelines pertaining to the subdivision of land detail how the proposed subdivision demonstrates suitability and how it enhances the natural environment and character of the area by including the retention of vegetation and faunal habitat and the need to plant vegetation along waterways, gullies, ridgelines and property boundaries. It is also important that the proposed subdivision can demonstrate the availability and provision of utility services, including sewerage, water, drainage, electricity, gas and telecommunications.

It is considered that the proposed subdivision has been designed to minimise vegetation loss across the site. There are a number of proposed lots which contain established native vegetation. The stormwater management concerns have been effectively demonstrated to

meet the concerns from the previous VCAT hearing which encourages that the functions and maintenance of reserves and outfalls can be adequately maintained without any detriment to adjoining properties.

6 Urgent and Other Business

7 Confidential Business

7.1 Council Insurance 2022/23

Under section 66(2) of the *Local Government Act 2020* a meeting considering confidential information may be closed to the public. Pursuant to sections 3(1) and 66(5) of the *Local Government Act 2020*, the information contained in this report is confidential because it contains Council business information being information that would prejudice the Council's position in commercial negotiations.

8 Close of Meeting